

Federal Election Commission

Annual Report 2005



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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

OFFICE OF THE CHAIRMAN

June 1, 2006

The President of the United States
Members of The United States Senate
Members of The United States House of Representatives,

Dear Mr. President, Senators and Representatives:

We are pleased to submit for your information the 31st Annual Report of the Federal Election Commission, pursuant to 2 U.S.C. §438(a)(9). The *Annual Report 2005* describes the activities performed by the Commission in the last calendar year.

During this non-election year, the Commission issued 20 advisory opinions, collected nearly \$2.5 million in civil penalties and closed 12 litigation cases. At the same time, the agency efficiently received and made public volumes of financial data, conducted numerous audits of political committees to ensure compliance with the law, and continued to promote compliance with campaign finance laws through a variety of outreach programs.

The Commission also completed a number of significant rulemakings, including new regulations that allow corporate members of trade associations to utilize payroll deductions when making contributions to the trade association's separate segregated fund (SSF). Additionally, several rulemakings were approved this year in response to a court challenge to a number of regulations the agency had promulgated to implement the Bipartisan Campaign Reform Act.

We hope that you will find this annual report to be a useful summary of the Commission's efforts to implement the Federal Election Campaign Act.

Respectfully,

A handwritten signature in black ink, appearing to read "Michael E. Toner".

Michael E. Toner
Chairman

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During its thirtieth year of operations, the Federal Election Commission (FEC or Commission) continued to fulfill its mission of disclosing and publishing campaign finance information, enforcing campaign finance laws and overseeing the public funding of Presidential elections. Throughout 2005, the FEC provided almost immediate public access to campaign finance reports and educated the regulated community, while carrying out enforcement initiatives and performing additional audits of political committees. Implementing the Bipartisan Campaign Reform Act of 2002 (BCRA) continued to be a major focus as the Commission defended the statute and its implementing regulations in court and issued numerous advisory opinions interpreting provisions of the new law. Court decisions invalidated some of the many BCRA rules promulgated by the Commission requiring the issuance of several new regulations during the year.

In 2005, the Commission streamlined disclosure of sources and amounts of funds spent on campaign activity. All the reports filed by committees were entered into the FEC's computer database and made available to the public within only 48 hours of receipt. The vast majority of these reports are now filed electronically, which allows the public access within minutes of receipt by the FEC. The FEC also significantly enhanced its online disclosure of information during 2005 by updating the Enforcement Query System (EQS). Initially, the EQS contained complete public case files for all Matters Under Review (MURs) closed since January 1, 2002. During 2005, however, staff updated the system to provide documents from closed MURs dating back to January 1, 1999, and all Alternative Dispute Resolution (ADR) cases since the program's establishment in October of 2000.

The FEC continued to promote compliance with campaign finance laws through a variety of outreach programs and the publication of educational materials. A notable update to the agency's web site in 2005 was a hypertext version of the FEC's *Court Case Abstracts* publication. This continuously-updated online index of FEC litigation replaced the paper publication that had typically been updated only on an annual basis. In addition to providing educational materials to the regulated community through the

FEC's web site, Commissioners and FEC staff hosted a full series of training conferences in Washington, D.C. and other regional locations, as well as a variety of roundtable workshops, seminars, public speaking engagements and state outreach programs.

In 2005, the Commission's Reports Analysis Division (RAD) increased the efficiency of its document review when compared to past election cycles. Additionally, RAD, in coordination with the Information Technology Division, launched the first two phases of a web-based review system. Three more phases are in development. The first two phases allow for greater sharing of information within and outside the Division, increase management's ability to assign and track work, provide analysts better control over work assignments and consolidate filers' information for easier access.

Through its standard enforcement process, the FEC entered into conciliation agreements requiring the payment of more than \$2.5 million in total civil penalties during 2005. The Commission's efficient and effective enforcement process allows the Office of General Counsel to focus its resources on the most serious violations of the Federal Election Campaign Act while other matters were referred to the Administrative Fine Program and Alternative Dispute Resolution (ADR) program.

The ADR program produced a total of 60 separate negotiated agreements based on 60 cases during 2005. In addition, the FEC's Administrative Fine Program continued to encourage compliance with the law's reporting deadlines by assessing civil money penalties for violations involving failure to file reports on time or at all, including failure to file 48-hour notices. During 2005, the Administrative Fine Program processed 209 cases and assessed a total of \$498,748 in fines for the U.S. Treasury.

The FEC's Audit Division conducted numerous audits of political committees to ensure compliance with campaign finance laws in 2005. For the 2004 election cycle, the Audit division released 50 audits of non-Presidential committees (authorized and unauthorized) and eleven audits of publicly funded Presidential committees.

Throughout the year, the FEC provided guidance to the regulated community through advisory opin-

ions (AO) and new regulations. During 2005, the Commission issued 20 AOs. Some of the AOs provided compliance information to federal officeholders running as nonfederal candidates as well as clarified the Commission's interpretation of the press exemption and the Millionaire's Amendment. The FEC also completed rulemakings in response to the needs of the regulated community, including new regulations that allow corporate members of trade associations to utilize payroll deductions when making contributions to the trade association's separate segregated fund (SSF).

Several regulations were approved this year in response to a court challenge to a small number of the regulations the agency had promulgated to implement the BCRA. In July 2005, the U.S. Court of Appeals for the District of Columbia Circuit upheld the appealed portion of the District Court's 2004 decision in *Shays v. FEC* that invalidated several Commission regulations. After the Court of Appeals declined to rehear the appeal *en banc*, the Commission announced that it would substantially expedite work on the affected regulations to ensure that new rules would be in place in time for the 2006 elections.

During 2005, the Commission initiated nine rulemakings to address all of the regulations affected by *Shays*. By the end of 2005, the Commission approved final rules in four of the rulemakings, including candidate solicitation at state, district and local party fundraising events; the *de minimis* exemption for the disbursement of Levin funds by state, district and local party committees; state, district and local party committee salaries and wages; and electioneering communications. The remaining five rulemakings included the definitions of "agent"; "Federal Election Activity" (FEA); "solicit" and "direct"; coordinated communications; and "public communications."¹

The Commission was also involved in four lawsuits related to political committee status. Two of the four challenged the Commission's decision to conclude its rulemaking on political committee status without

adopting a regulation defining "major purpose." Another arose from rules the agency promulgated in 2004 that require groups to treat as federal funds the proceeds of solicitations that indicate receipts will be used to support a federal candidate and change the allocation required for certain expenditures. The fourth lawsuit was an enforcement suit filed by the Commission itself charging that an organization failed to register as a political committee. Those cases were pending at the close of 2005.

The material that follows details the FEC's activities during 2005. Supplemental information on most topics may also be found in issues of the FEC's monthly newsletter, the *Record*, that were published during the past year.

¹ The Commission completed all of the final five rulemakings by April 7, 2006. See Chapter 3 for more details.

Chapter One

Keeping the Public Informed

Keeping the public informed is central to the FEC's mission. In order to ensure that voters can make informed decisions on Election Day, the agency's public disclosure and educational outreach programs provide the electorate with a wealth of information about various aspects of federal campaign finance law. The financial reports of all federal political committees are available to members of the general public, providing an added incentive for the regulated community to comply with the law. Educational outreach helps those committees achieve compliance by providing the information necessary to understand the requirements of the law.

Throughout 2005, the Commission maintained its commitment to customer service and expanded public access to Commission information. As detailed below, the Commission implemented changes throughout the year that will further enhance the disclosure and educational outreach programs.

Public Disclosure

During 2005, the disclosure of the sources and amounts of funds spent on federal campaign activity continued to be the focal point of the Commission's work. The Commission received the reports filed by committees, reviewed them to ensure compliance with the law, entered the data into the FEC's computer database and made the reports available to the public within 48 hours of receipt.

Electronic Filing

Now in its fifth year of operation, the Commission's mandatory electronic filing program continued to pay disclosure dividends in 2005. Under the program, committees that receive contributions or make expenditures in excess of \$50,000 in a calendar year, or expect to do so, must file their campaign finance reports electronically.¹ Committees that are required to file electronically, but instead file on paper, are considered nonfilers and could be subject to enforce-

ment actions, including administrative fines. In order to file electronically, committee treasurers obtain passwords from the FEC and use software to fill out the reports, which they can send to the Commission via Internet connection, modem or floppy disk. The FEC's validation system verifies that the reports meet certain criteria and informs the committees of problems that need to be fixed.

In February of 2005, the Commission updated its electronic filing format from Version 5.1 to Version 5.2 in order to reflect changes in Commission regulations that took effect on January 1, 2005. Beginning with the February monthly report, political action committees (PACs) and party committees were required to use the FEC's revised Form 3X, which contained updated H Schedules that conform to the new allocation rules for PACs.

State Filing Waivers

The Commission's State Filing Waiver Program, which began in October 1999, continued to ease the reporting and recordkeeping burdens for political committees and state election offices. With the addition of Montana in August 2005, all 50 states and two U.S. territories have now qualified for the waiver.² Under the program, filers whose reports are available on the FEC web site need not file duplicate copies of their reports in states and territories that provide public access to the Commission's web site.

Imaging and Processing Data

The Commission also continued its work in 2005 to make the reports it receives quickly and easily available to the public. The Commission scans all of the paper reports filed with the agency to create digital images of the documents, which are then accessible to the public in the FEC's Public Disclosure Office or on the Commission's web site. In addition to the digital imaging system, the Commission codes and enters the information taken from campaign finance

¹ Mandatory electronic filing requirements do not apply to Senate candidates' committees and other committees that only support Senate candidates.

² As of December 31, 2005, the FEC had certified the territories of American Samoa and Virgin Islands for the State Filing Waiver Program. Only Guam and Puerto Rico are not currently in the State Filing Waiver Program.

reports into the agency's disclosure database, which contains data from 1977 to the present. Information is coded so that committees are identified consistently throughout the database. For electronic filings, this process is completely automated.

Public Access to Data

As a result of modernized hardware, software and communications infrastructure, the Commission's retrieval system allows anyone with access to the Commission web site—www.fec.gov—to examine the FEC's campaign finance disclosure database. The system also allows users to perform complex search functions.

The Commission's disclosure database, which contains millions of transactions, enables researchers to select a profile of a committee's financial activity

for each election cycle. Researchers can also access information on contributions by using a variety of search elements (e.g., donor's name, recipient's name, date, amount or geographic location).

Visitors to the Office of Public Disclosure can use computer terminals to inspect digital images of reports and to access the disclosure database and more than 25 different campaign finance indices that organize the data in different ways. Visitors can also access the FEC's web site, which offers search and retrieval of more than three million images of report pages dating back to 1993 and over two million database entries since 1997.

The Office of Public Disclosure continues to make available microfilmed copies of all campaign finance reports, paper copies of reports from Congressional candidates and Commission documents such as press releases, audit reports, closed enforcement cases (MURs) and agenda documents.

Throughout the agency's history, the Commission has continued to improve disclosure information's accessibility and availability to members of the public, the press and the regulated community. This year was no exception. During 2005, the Office of Public Disclosure held extended hours to provide more opportunities for research and inquiries on site at the Commission. Additionally, as detailed below, the Commission continued to improve the quality and quantity of information available on its web site.

Chart 1-1
Size of Detailed Database by Election Cycle

Year	Number of Detailed Entries*
1990	767,000
1991	444,000 [†]
1992	1,400,000
1993	472,000
1994	1,364,000
1995	570,000
1996	1,887,160
1997	619,170
1998	1,652,904
1999	840,241
2000	2,390,837
2001	661,591
2002	2,281,963
2003	1,109,946
2004	2,131,999
2005	929,465

* Figures for even-numbered years reflect the cumulative total for each two-year election cycle.

[†] The FEC began entering nonfederal account data in 1991.

Enforcement Query System

In 2005, the Commission continued to update and expand its Enforcement Query System (EQS). Launched in December 2003, the EQS program is a web-based search tool that allows users to find and examine public documents in closed Commission enforcement matters. Using current scanning, optical character recognition and text search technologies, the system permits intuitive and flexible searches of case documents and other materials. Previously, these documents were available only at the Commission's offices in Washington, and only on paper or microfilm. Users of the system can search for specific words or phrases from the text of all public case documents. They can also identify single MURs or groups of cases by searching additional identifying

information about cases. Included among these criteria are case names and numbers, complainants and respondents, timeframes, dispositions, legal issues and penalty amounts.

Initially, the EQS contained complete public case files for all MURs closed since January 1, 2002, and at the end of 2004 it included all documents from MURs closed since January 1, 2000. In the past year, however, staff updated the system to provide documents from MURs closed since January 1, 1999. In addition, the Commission expanded the EQS to include all closed Alternative Dispute Resolution (ADR) cases since the ADR program began in October of 2000.

Review of Reports

The Commission's Reports Analysis Division (RAD) reviews all reports to track compliance with the law and to ensure that the public record provides a full and accurate portrayal of campaign finance activity. During 2005, RAD analysts completed their reviews much more efficiently than in past election cycles. For instance, staff reduced the time between the receipt and review of reports by 30 percent when compared to 2003. RAD also collaborated with other divisions to provide greater accessibility and more efficient service to members of the regulated community.

In 2005, RAD, in coordination with the Information Technology Division, launched the first two phases of a web-based review system. Three more phases are in development. The first two phases allow for greater sharing of information within the Division and outside it, increase management's ability to assign and track work, provide analysts with better control over work assignments and consolidate information about filing entities for easier access. It is expected that, when completed, most of the review of documents will be as fully automated as possible, significantly enhancing RAD's efficiency and production. Other programs related to non- or late filing and administrative fines have been developed in coordination with ITD that, when fully implemented, will provide further efficiencies.

Educational Outreach

Throughout the year, the Commission continued to promote voluntary compliance with the law by educating committees about the law's requirements.

Home Page (www.fec.gov)

The FEC's web site offers members of the public, press and regulated community the ability to obtain an array of information with ease. Visitors can access publications, current laws and regulations, notices of proposed rulemakings, public comments, final rules and explanations and justifications, advisory opinion requests and agenda documents considered in open meetings. Visitors can also search for advisory opinions (AOs) on the web by using key words or phrases or by entering the year and AO number. Researchers may also read agency news releases, review federal election results, voter registration and turnout statistics and look up reporting dates. Finally, the National Mail Voter Registration Form, FEC registration and reporting forms, copies of the *Record* newsletter, the Campaign Guide series and other agency publications may all be downloaded from www.fec.gov.

Among the many updates and additions to the agency's web site during 2005, the most notable was a new hypertext version of the FEC's *Court Case Abstracts* publication. This continuously-updated online index of FEC litigation replaced the paper publication that had typically been updated on an annual basis. In the online edition, FEC court cases are listed alphabetically by non-FEC litigant or according to subject matter. Each index entry links to a summary and, in some instances, court opinions and additional documents pertaining to the case.

In addition to improving the web site, the Commission now participates in a government-wide e-rulemaking initiative. This program offers the public a single online point of access to rulemakings from a variety of government agencies. While information on FEC rulemakings continues to be available on www.fec.gov, some of the members of the public may now elect to obtain information and comment on active rulemakings through www.regulations.gov.

Telephone Assistance

A committee's first contact with the Commission is often a telephone call to the agency's toll-free information hotline. FEC staff members research relevant advisory opinions and litigation, as needed, to answer specific inquiries. Callers receive FEC documents, publications and forms at no cost. In 2005, the Information Division responded to 11,064 callers with compliance questions. The monthly average was 922, peaking in the month of January with 1,054 calls.

E-mail Inquiries

As the use of the Internet has increased in recent years, the FEC has made e-mail available to the public and regulated community as a form of communication with the Commission. Information Division staff typically respond to the e-mails within 10 days of receipt of the request. The number of questions and comments sent to the Commission's primary information account (Info@fec.gov) has increased dramatically. Even though 2005 was not a federal election year, Information Division staff responded to more e-mail inquiries (1,374) than during the 2004 Presidential election year.

Other Commission offices with public e-mail addresses include: Alternative Dispute Resolution, Audit, the Commission Secretary, Congressional Affairs, Electronic Filing, Equal Employment Opportunity, Information, Information Technology, the Inspector General, the Law Library, Human Resources and Labor Relations, Press, Public Records and the Staff Director.

Faxline

The Commission's automated Faxline allows the public to obtain publications or other documents quickly and easily. During the year, 161 callers sought information from the 24-hour Faxline and received 207 documents.

Reporting Assistance

During 2005, the FEC's Information Division provided basic reporting assistance to callers who wished

to preserve their anonymity, while RAD's Campaign Finance Analysts answered more complex reporting and compliance questions from committees calling on the toll-free line.

The Commission continued to encourage compliance with the law by mailing committees reminders of upcoming reporting deadlines three weeks before the due dates. *The Record*, the FEC's monthly newsletter, and the FEC's web site also listed reporting schedules and requirements, including new requirements imposed as part of the Bipartisan Campaign Reform Act of 2002 (BCRA).

Roundtables

As part of its educational outreach activities, the FEC's Information Division holds roundtable workshops for the regulated community. These smaller-scale workshops generally focus on new regulations, reporting requirements or other discrete topics. The Commission hosted 5 roundtables in 2005 with more than 100 participants.

At the reporting roundtables led by staff from Information and RAD, attendees received guidance on reporting issues for candidates, PACs and parties, including disclosure requirements under the BCRA and recent FEC regulations. Attendees also had an opportunity to meet their committee's RAD analyst and staff from the Commission's Electronic Filing Office.

The Commission also hosted a roundtable session for political committee treasurers to discuss treasurer responsibilities, including reporting, recordkeeping and compliance with the limits and prohibitions of the Federal Election Campaign Act (the Act). Staff also addressed the Commission's recent policy statement on treasurer liability.

In response to increased activity by 527 political organizations not registered with the FEC, the Commission hosted a joint roundtable with the Internal Revenue Service (IRS) in January 2005 that focused on each agency's jurisdiction over these organizations. Commission staff focused on new FEC rules on political committee status and allocation for PACs, while IRS staff covered rules pertaining to 527s' obligations under the tax code.

Seminars

In addition to the 527 organization roundtable, the Commission hosted a one-day seminar for nonconnected PACs and 527 organizations in November. The seminar addressed issues such as fundraising and reporting. Commissioners and experienced staff discussed recent changes to campaign finance law, including the new allocation and solicitation rules.

State Outreach

As part of the FEC's State Outreach Program, Public Affairs Specialists conducted informal meetings in different cities across the country to brief PACs, party committees and candidate committees on areas of the law specific to their needs. In 2005, FEC staff held workshops in Savannah, Georgia; Denver, Colorado; and Portland, Oregon.

Conferences

Also during 2005, the Commission conducted several conferences attended by approximately 560 individuals to help candidates and committees understand and comply with the law. Commissioners and staff members from the Information Division, Office of General Counsel, Reports Analysis Division, Congressional Affairs Office and Press Office conducted workshops to help educate the regulated community. The Commission launched its conference season with a conference for House and Senate Campaigns and political party committees held in Washington, D.C. An additional Washington, D.C., conference was held for corporations and their PACs. In June, the FEC hosted a conference for trade associations, labor organizations and membership organizations in Chicago. Regional conferences were held in San Diego and San Antonio. The conferences consisted of a series of workshops that explained how the Act applies to House and Senate campaigns, political party committees and corporations, labor organizations, trade associations, membership organizations and their respective PACs. The workshops specifically addressed recent changes to campaign finance law and focused on fundraising and reporting rules.

Tours and Visits

In addition to holding conferences and roundtable sessions, the Commission welcomes individuals and groups who visit the FEC. Visitors to the Commission during 2005, including 21 student groups and 21 foreign delegations, listened to presentations about campaign finance law and, in some instances, toured the agency's Office of Public Disclosure. During 2005, the Commission made an effort not only to welcome visitors to the Commission but also to make official appearances, domestically and abroad.

Media Assistance

The Commission's Press Office continued to field questions from media representatives and navigate reporters through the FEC's vast pool of information. Press office staff responded to 5,200 calls from members of the press and prepared 142 news releases during 2005. Many of these releases alerted reporters to new campaign finance data and contained statistical graphs and tables. Releases concerning enforcement matters at the Commission include explanatory material to provide a more complete description of the statutory framework of the allegations and the resolution of the matter. As part of the web site update, current and archived press releases were organized chronologically and according to subject matter.

Publications

In 2005, the Commission produced a number of documents to help committees, the press and the general public understand the law and find information about campaign finance. The FEC's Information Division continued to revise guides and brochures to reflect changes resulting from the BCRA and its implementing regulations.

The following brochures were completed and made available to the public: *Contributions, Committee Treasurers* and *FEC and the Federal Campaign Finance Law*. These brochures are available on the Commission's web site or they may be obtained via mail by contacting the Information Division.

Commission staff also updated the *Campaign Guide for Nonconnected Committees* to reflect the

BCRA amendments and implementing regulations. In the closing of 2005, the Commission also began updating the *Campaign Guide for Corporations and Labor Organizations*. Until those updates are completed, the agency made available a *Campaign Guide Supplement*—a compilation of *Record* newsletter articles summarizing provisions of the BCRA.

In September, the Commission published the *Thirty Year Report* which commemorates the Commission's 30-year anniversary. Rather than chronicle the entire 30-year period, the report focuses on significant Commission actions of recent years. It includes:

- An historical context for the report;
- An overview of the Commission's administration, enforcement, interpretation and defense of the Act;
- Key issues the Commission is currently debating or has recently resolved; and
- FEC statistics to supplement the continuing national debate on the structure and role of the Commission, the place of party committees in the electoral process and the influence of independent organizations on the electoral process.

The *Thirty Year Report* provides a portrait of an agency that has accomplished much, even as it has grappled with difficult issues whose resolution has helped define the proper balance between governmental interests and constitutionally protected political activity.

As in past years, the Commission distributed more than 10,000 free copies of its *Record* newsletter each month. The newsletter summarizes recent advisory opinions, compliance cases, audits, litigation and changes in regulations. It also provides campaign finance statistics in graph and table format.

Chapter Two Administering the Law

As part of its mission to administer, interpret, enforce and defend the Federal Election Campaign Act (the Act), the Commission promulgates regulations and issues advisory opinions (AOs). The regulations interpret and implement the statutory requirements enacted by Congress. AOs, in turn, clarify how the statute and regulations apply to real-life situations brought to the Commission by candidates, political committees and others in the regulated community. The agency's enforcement actions promote compliance by correcting violations and demonstrating to the regulated community that violations can result in civil penalties and other remedial action. In cases where the Commission cannot reach an agreement with a respondent, the agency may seek relief in courts. The FEC also has primary responsibility for defending the Act and regulations against court challenges. During 2005, the Commission completed work on 10 rulemakings, issued 20 AOs, signed 46 conciliation agreements, collected nearly \$2.5 million in total civil penalties and closed 12 litigation cases.

Regulations

Congressional action, judicial decisions, petitions for rulemaking or other changes in campaign finance law or practices may necessitate that the Commission update or create new regulations. Consequently, the FEC undertakes rulemakings to revise existing campaign finance rules or create new ones.

Notices of proposed rulemakings (NPRMs) are published in the *Federal Register*, on the FEC's web site and on the U.S. Government web site (www.regulations.gov). The notices provide an opportunity for members of the public and regulated community to review rules, submit written comments to the Commission and testify at public hearings held at the FEC when appropriate. The Commission considers public comments and testimony when deliberating on the final rules in open meetings. The text of final rules and corresponding Explanation and Justification (E&J) are published in the *Federal Register* and sent to the House of Representatives and Senate once they have been approved. The Commission announces the effective date of the final rule, which is at least 30 days after the final rule and its E&J are published in the *Federal Register*.

In 2005, nine of the Commission's rulemakings were initiated in response to court decisions in *Shays v. FEC* that invalidated several of the regulations the Commission promulgated to implement the Bipartisan Campaign Reform Act of 2002 (BCRA).

Rulemakings Completed in 2005

The Commission completed work on the following new regulations during 2005:

- Contributions by Minors, NPRM approved April 1, 2004, final rules approved January 27, 2005.
- Filing by Priority Mail, Express Mail and Overnight Delivery, NPRM approved December 16, 2004, final rules approved March 10, 2005.
- Party Committee Donations to Tax-Exempt Organizations and Political Organizations, NPRM approved December 2, 2004, final rules approved March 10, 2005.
- Civil Penalties Adjusted for Inflation, final rules approved June 9, 2005.
- Candidate Solicitation at State, District and Local Party Fundraising Events, NPRM approved February 14, 2005, public hearing held on May 17, 2005, revised E&J approved June 23, 2005.
- Payroll Deductions for Trade Association SSFs, NPRM approved December 16, 2004, public hearing held on May 17, 2005, final rules approved July 14, 2005.
- "De Minimis" Exemption for Disbursement of Levin Funds by State, District and Local Party Committees, NPRM approved January 27, 2005, final rules approved November 10, 2005.
- State, District and Local Party Committee Salaries and Wages, NPRM approved April 28, 2005, public hearing held on August 4, 2005, reopening of comment period approved August 22, 2005, final rules approved December 1, 2005.
- Electioneering Communications, NPRM approved August 18, 2005, public hearing held on October 20, 2005, final rules approved December 15, 2005.
- Administrative Fine Program, final rules approved December 15, 2005.

Other Rulemakings in Progress

In addition to completing the preceding rules, the Commission initiated regulatory actions by issuing an NPRM regarding:

- Definition of “Agent” for Coordinated and Independent Expenditures and Nonfederal Funds Regulations, NPRM approved January 27, 2005, public hearing held on May 17, 2005.
- Internet Communications, NPRM approved March 24, 2005, public hearing held on June 28 and 29, 2005.
- Definition of Federal Election Activity, NPRM approved April 28, 2005, public hearing held on August 4, 2005, extension of comments on NPRM August 22, 2005.
- Definition of “Solicit” and “Direct,” NPRM approved September 22, 2005, public hearing held on November 15, 2005.
- Coordinated Communications, NPRM approved December 8, 2005.

Advisory Opinions

The Commission responds to questions about how the law applies to specific situations by issuing AOs. When the Commission receives a complete request for an AO, it generally has 60 days to respond. If, however, a candidate’s campaign submits a complete request within 60 days before an election, and the request presents a specific transaction or activity that directly relates to that election, the Commission must respond within 20 days. The Office of General Counsel (OGC) prepares a draft opinion, which the Commissioners discuss and vote on during an open meeting. A draft opinion must receive at least four favorable votes to be approved.

In 2005, the Commission received 20 complete advisory opinion requests. Several of the AOs that were issued addressed the matter of federal officeholders running as nonfederal candidates, ballot initiatives and the Millionaire’s Amendment. These and other AOs issued during the year are explored in greater detail in Chapter 3 “Legal Issues.”

Compliance

The FEC has implemented a series of changes in recent years aimed at improving the efficiency and effectiveness of its enforcement programs. These management initiatives have included improved prioritization of cases; use of the standard enforcement process for more complicated cases; an Administrative Fine Program for routine filing violations; and Alternative Dispute Resolution (ADR) to address some routine matters more flexibly. In 2005, the FEC obtained civil penalties and fines through the standard enforcement process, ADR and the Administrative Fine Program totaling nearly \$2.5 million.

The Standard Enforcement Process

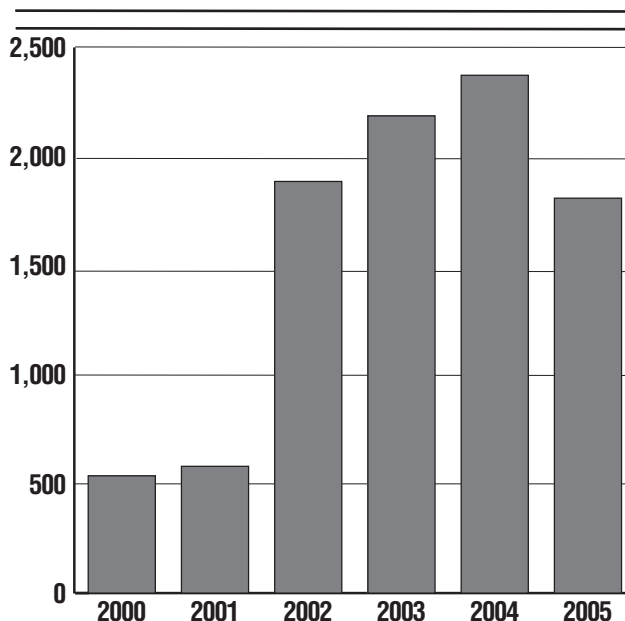
Under the standard enforcement process set forth at 2 U.S.C. §437g, the Commission learns of possible election law violations in five ways. First, the agency’s monitoring process may discover potential violations through a review of a committee’s reports or through a Commission audit. Second, potential violations may be brought to the Commission’s attention through the complaint process. This process enables anyone to file a sworn complaint alleging violations and explaining the basis for the allegations. Third, the referral process enables other government agencies to refer possible violations to the FEC. Fourth, the Commission may investigate a possible violation based on news articles and similar published accounts. Finally, any person or entity who believes it may have committed a violation may bring the matter *sua sponte* to the Commission’s attention.

As required by 2 U.S.C §437g, the FEC’s OGC reviews and investigates enforcement matters, or matters under review (MUR). OGC makes recommendations to the Commission regarding the disposition of matters and negotiates conciliation agreements requiring the payment of civil penalties.

In the first step of the standard enforcement process, OGC recommends whether the Commission should find “reason to believe,” that is, whether an investigation is warranted. If the Commission determines there is “reason to believe” a violation has been or may have been committed, respondents are notified and, if necessary, an investigation is opened.

The Commission has authority to subpoena information and ask a federal court to enforce a subpoena. After the investigation, the General Counsel sends a brief to the respondent, stating his position on the legal and factual issues of the case and recommending whether the Commission should find “probable cause to believe” a violation has occurred. In addition to briefs prepared by the General Counsel, the Commission will consider respondents’ reply briefs supporting their positions. If the Commission finds that there is probable cause to believe that a violation of the Act has occurred, it is required to enter into conciliation with the respondents for a period of at least 30 days. If the Commission and respondent are not able to resolve the case through a conciliation agreement, the Commission may initiate a civil action for relief in federal district court. In matters resolved through the standard enforcement process, the FEC’s OGC negotiated \$1,807,769 in civil penalties in 2005.

Chart 2-1
Civil Penalties for Standard Enforcement Process
by Calendar Year
In Thousands of Dollars

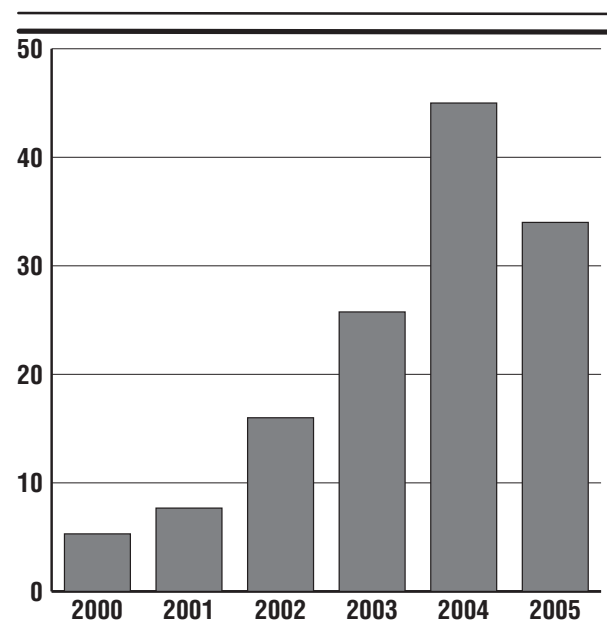


Administrative Fine Program

Under the Administrative Fine Program, the Commission assesses civil money penalties for late and nonfiled reports. Penalty amounts are determined by the number of days a report was late, the amount of financial activity involved and any prior penalties for violations under the administrative fine regulations.

Initially, Congress authorized the Program as a pilot, only in place for violations occurring between July 14, 2000, and December 31, 2001. Since then, however, Congress has extended authorization for the Administrative Fine Program several times. Most recently, on November 30, 2005, President Bush signed the Transportation, Treasury, Housing and Urban Development, Judiciary, District of Columbia, and Independent Agencies Appropriations Act, 2006, which extended the Congressional authorization for the program from December 31, 2005, to December 31, 2008.

Chart 2-2
Median Civil Penalty by Calendar Year
In Thousands of Dollars



How the Program Works

Prior to establishing the Administrative Fine Program, the Commission handled violations involving late and nonfiled reports under its standard enforcement procedures, as described above. The Administrative Fine Program has created a streamlined process for addressing these reporting violations.

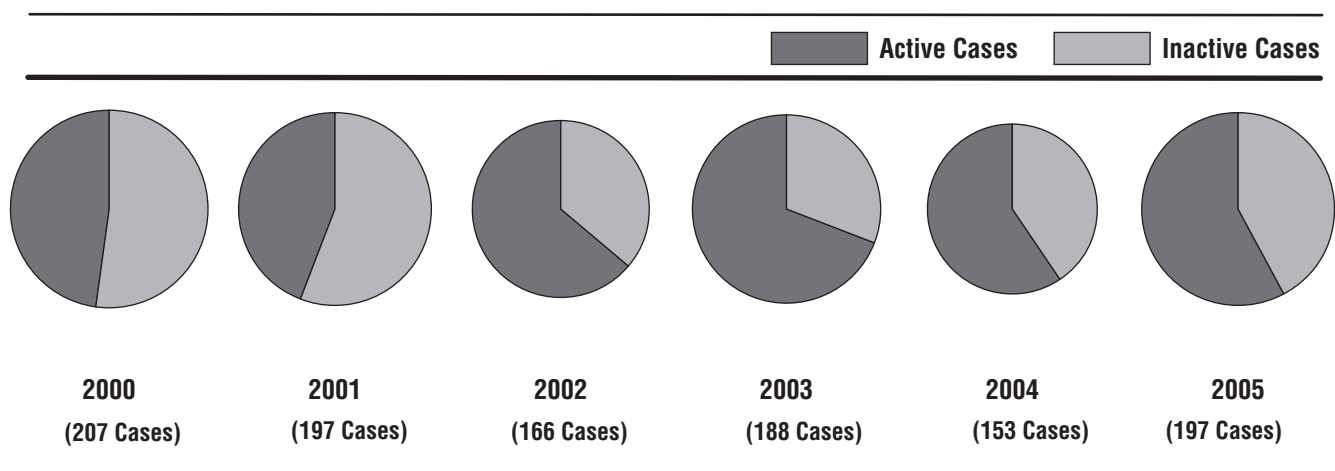
Administrative fine actions originate in the Reports Analysis Division (RAD). RAD monitors committees registered with the Commission for possible filing violations and recommends to the Commission those committees that appear to be in violation. If the Commission finds "reason to believe" (RTB) that a committee and its treasurer have violated the applicable reporting provisions, RAD provides a written notification to the committee and its treasurer containing the factual and legal basis of its finding and the amount of the proposed civil money penalty. The respondents have 40 days from the date of the RTB finding to either pay the designated penalty or submit a written response to the Office of Administrative Review. The response should provide proper supporting documentation outlining why they believe the Commission's finding and/or penalty has been administered erroneously. If they submit a response to the Office

of Administrative Review, RAD forwards its information about the case to that office for consideration by an impartial reviewing officer who was not involved in the original RTB recommendation.

After reviewing the RTB finding and the respondents' written submission, the reviewing officer forwards a recommendation to the Commission along with all documentation. The respondents may submit written responses to the reviewing officer's recommendation. A final determination is then made by the Commission as to whether the respondents violated the law. The Commission assesses a civil money penalty if a violation has occurred and the respondents have not demonstrated the existence of "extraordinary circumstances" that prevented them from filing the report in a timely manner.

Should the respondents fail to pay the civil money penalty or submit a challenge within the original 40 days, the Commission will issue a final determination with an appropriate civil money penalty. The respondents will then have an additional 30 days after receipt of the FEC's final determination to pay the penalty or to seek judicial review. After the Commission's final determination, the respondents can challenge the penalty by taking the matter to federal district

Chart 2-3
Ratio of Active to Inactive Cases by Calendar Year



court, but they cannot raise any new arguments not raised during the administrative process.

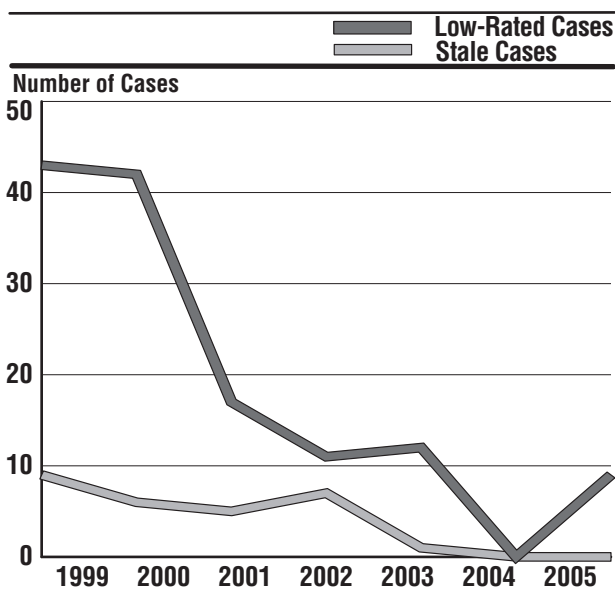
The Commission may transfer cases to the U.S. Department of Treasury for collection when respondents fail to pay the penalty or seek judicial review after a final determination has been made. Alternatively, the Commission may decide to file suit in the appropriate U.S. district court to collect owed civil money penalties under 2 U.S.C 437 g(a)(6).

Calculating Penalties

Under the program, respondents may face administrative penalties that vary depending on the interaction of the following factors:

- Election sensitivity of the report;
- Whether the committee is a late filer (and the number of days late) or a nonfiler;
- The amount of financial activity in the report; and
- Prior civil money penalties for reporting violations.

Chart 2-4
Cases Dismissed Under
Enforcement Priority System



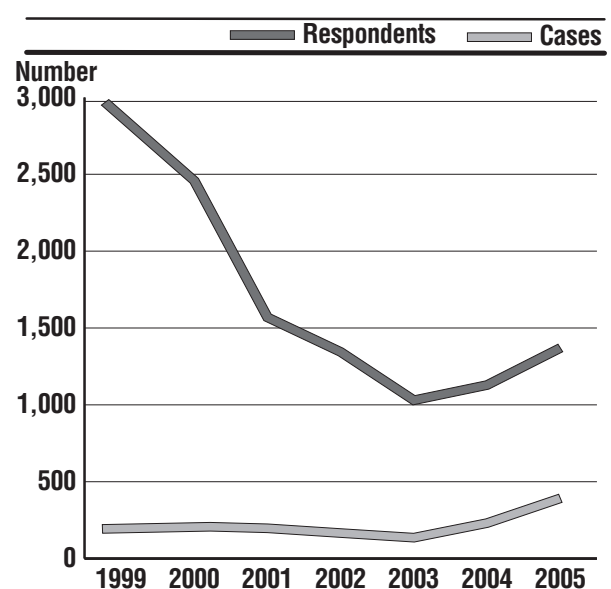
Administrative Fines in 2005

During 2005, the Commission processed 209 cases and assessed a total of \$498,748 in fines.

Alternative Dispute Resolution Program

The FEC's Alternative Dispute Resolution (ADR) program was established in October of 2000 as a pilot to determine the viability of using ADR procedures to address and resolve campaign finance law violations. Now in its third year as a permanent program at the Commission, the ADR Office (ADRO) continues to negotiate expeditious settlements of cases through mutually agreeable terms that promote compliance with the Act and Commission regulations. If the respondent(s) and the Commission representative are unable to resolve the matter, mediation is available by mutual agreement. All ADR settlements are submitted to the Commission for final approval. Thus far, no cases have required mediation.

Chart 2-5
Number of Respondents
and Pending Cases by Calendar Year



However, not all cases are eligible for the ADR program. Cases may be assigned to the program only after they have been reviewed to determine suitability. A case, for example, will be excluded from ADR consideration if it:

- Raises issues requiring a definitive resolution for precedential value;
- Raises issues that bear on government policy;
- Affects other persons or organizations that are not parties to the proceeding; or
- Would benefit from a full public record of the proceeding.

Additional internal factors help to determine whether a case is appropriate for ADR. Such factors are addressed on a case-specific basis.

The program's success in reaching its goal of expediting the resolution of enforcement matters is evident in changes that have taken place both at the Commission and within the regulated community. For example, ADR has established a presence among the regulated community, with members of the election bar requesting that matters be considered by the program. Moreover, the process has become more efficient under procedures adopted by RAD, the Audit Division and OGC that allow cases to be referred directly to ADR without review by OGC.

Nearly 70 percent of the 307 cases ADRO has processed since its inception have been accepted into ADR. The remaining cases were either deemed inappropriate for ADR and dismissed for lack of evidence or dismissed due to the *de minimis* nature of the matter. ADRO did not process any cases involving respondents who rejected the ADR option. Sixty-seven percent of the total caseload arose from complaints (including MURs and Pre-MURs) filed with the Commission. The remainder originated as referrals from RAD, Audit or *sua sponte* submissions. Cases not assigned to ADR were returned to OGC for processing.

ADR negotiated settlements focus on promoting compliance with the Act and providing committees with resources required to remedy past inaccuracies. Examples of the terms of ADR settlements include requiring attendance at an FEC conference or work-

shop, preparing a manual to help committee staff comply with the Commission's regulations, and hiring outside auditors to review for a specific period of time a committee's financial records.

ADR in 2005

In 2005, the ADR office concluded 91 cases that produced 60 separate agreements based on 60 cases. The Commission dismissed 28 of the remaining cases and returned three to OGC. Fifty-nine cases were assigned to ADRO during the year, and 21 remained open at year's end.

Results of Compliance Initiatives

As noted previously, the Commission dedicates a substantial portion of its resources to its compliance programs. In recent years, this has included an Administrative Fine Program and Alternative Dispute Resolution (ADR) program, in addition to the standard enforcement program. Using these three distinct compliance tools has allowed the Commission to process cases expeditiously, ensuring the agency's limited resources are employed as effectively and efficiently as possible. As a result, the FEC has activated more cases, closed more cases with substantive action and resolved some cases that would otherwise have been dismissed.

The standard enforcement program, which is the responsibility of the Office of General Counsel (OGC), often deals with complex cases involving significant violations of the law. The General Counsel has undertaken a number of management and organizational initiatives in the last four years to increase the efficiency of processing matters under review (MURs). The results of these initiatives include a more current caseload and higher civil penalties. Although a much larger percentage of the OGC's caseload now involves the most factually and legally complex cases, MURs have been processed (analyzed, investigated, conciliated) much more expeditiously. Specifically, MURs closed on average 36 percent faster in 2005 compared to 2003, and a greater percentage of the assigned (or active) caseload now involves the most recent election cycle (i.e., 2003-2004).

This increased efficiency has not come at the cost of less effective enforcement. One measure of effectiveness is the cumulative annual amount of civil penalties and fines obtained. By this measure, the FEC's effectiveness continues to grow, as illustrated by the following: In the ten years prior to the introduction of the Administrative Fine and ADR programs, an average of 204 cases were closed each year with civil penalties averaging nearly \$900,000 per year. In 2005, approximately four years after the implementation of the Administrative Fine and Alternative Dispute Resolution Programs, 392 cases were closed with civil penalties and fines totaling nearly \$2.5 million. Focusing on the civil penalties obtained in the standard enforcement program, 2005 marks the fourth consecutive year with more than \$1 million in penalties.

The ADR program affords both the FEC and the respondents the opportunity to resolve cases more rapidly, and it provides an opportunity for the Commission to resolve more cases substantively. Since the program's inception on October 1, 2000, the ADR Office has formally closed 219 cases, 168 with substantive action (77 percent). Those 168 cases produced 191 separate negotiated agreements, and yielded civil penalties totaling more than \$310,000. On average, 123 days elapsed from the time a case was assigned to ADR until the Commission approved the agreement, closing the case.

The Administrative Fine Program has closed 1,269 cases since its July 14, 2000, inception and has assessed nearly \$2.6 million in civil money penalties for cases of late and non-filed reports. In 2005, cases were closed on average 209 days from when the reports were due to be filed at the FEC.

For the standard enforcement program itself, from 2001 to 2005, the FEC closed 129 out of 516 cases with civil penalties (25 percent). Of particular note is that the FEC's previous record of dismissing cases due to "staleness" has been all but eradicated. From

1995 to 2000, the FEC dismissed as "stale" 21 percent of cases. The year of 2005 was the second year in a row in which the FEC did not dismiss a single case as stale. As illustrated in Charts 2-1 through 2-5, the FEC has made significant improvements in its compliance programs.

Audit

The Audit Division focused on audits of non-Presidential committees (Authorized and Non-Authorized combined) in 2005.¹ Audits of non-Presidential committees are initiated in response to referrals from RAD that have been approved by the Commission. In 2005, the Audit Division closed 35 audits on non-Presidential committees and one audit of a Presidential committee. The division publicly released 17 audits of non-Presidential committees and one audit of a Presidential committee. Seventy audits were pending at the end of the year.

An increased audit presence not only contributes to the Commission's enforcement efforts, but also encourages voluntary compliance among the regulated community. Furthermore, the broader scope of the audit presence provides the Commission with information that can be used to refine internal procedures and regulation.

Litigation

In addition to the high-profile *Shays* case and other notable legal challenges (discussed in Chapter 3), the Commission's litigation staff resolved two notable enforcement matters during 2005. In June 2005, the U.S. District Court for the Central District of Illinois signed a consent judgment in *FEC v. Friends of Lane Evans et al.* reflecting an agreement between the Commission and Friends of Lane Evans, the 17th District Victory Fund and the Rock Island Democratic Central Committee. Under the consent agreement, the defendants neither admitted nor denied violating the Act, but agreed to pay civil penalties. Friends of Lane Evans paid a \$185,000 civil penalty for violations by the Evans campaign and the 17th District Victory Fund, while the Rock Island Democratic Central Committee agreed to a \$30,000 civil penalty for

¹ Audits of non-Presidential committees are also referred to as Title 2 Audits, while audits of Presidential committees are also known as Title 26 Audits.

its role in the violations. *FEC v. Democratic Party of New Mexico* also resulted in a large civil penalty with the Democratic Party of New Mexico and its treasurer paying a \$60,000 civil penalty and transferring \$86,900 from the Democratic Party of New Mexico's federal account to its nonfederal account.

Chapter Three Legal Issues

The FEC is the independent regulatory agency responsible for interpreting, administering, enforcing and defending the Federal Election Campaign Act (FECA or the Act). As part of this task, the Commission promulgates regulations implementing the Act's requirements and issues advisory opinions (AOs) that respond to inquiries from those affected by the law. Additionally, the Commission has jurisdiction over the civil enforcement of the Act. Finally, Commission attorneys handle civil litigation arising out of any legal actions brought by or against the Commission.

During 2005, the Commission devoted much of its resources to clarifying the application of the Bipartisan Campaign Reform Act of 2002 (BCRA) in light of decisions by the U.S. District Court for the District of Columbia and the U.S. Court of Appeals for the D.C. Circuit in *Shays v. FEC*. This chapter reviews the major legal issues considered by the FEC in rulemakings, AOs, litigation and enforcement action in 2005.

Shays v. FEC

On July 15, 2005, the U.S. Court of Appeals for the District of Columbia Circuit upheld the appealed portion of the U.S. District Court for the District of Columbia's 2004 decision in *Shays v. FEC* that invalidated several Commission regulations. (For details on the district court decision, see *Annual Report 2004*.) In its decision, the appeals court found that some of the agency's regulations implementing provisions of the BCRA were invalid either because they failed to follow Congressional intent or because they did not comply with the Administrative Procedure Act's (APA) rules for promulgating regulations.

On August 29, 2005, the Commission filed with the U.S. Court of Appeals for the District of Columbia Circuit a petition for rehearing *en banc*, but on October 21, 2005, the court denied that request.

Background

The standard for judicial review in a case such as this, where a party alleges that an agency's actions are contrary to the statute, is called *Chevron* review, after the Supreme Court's decision in *Chevron, U.S.A., Inc. v. Natural Resources Defense*

Council, 467 U.S. 837 (1984). In *Chevron* review, the court asks first whether Congress has spoken to the precise issue at hand. If so, then the agency's interpretation of the statute must implement Congress's unambiguous intent. If, however, Congress has not spoken explicitly to the question at hand, the court must consider whether the agency's rules are based on a permissible reading of the statute.

The courts also consider whether the FEC engaged in a reasoned analysis when it promulgated its regulations. Under the APA, regulations that are promulgated without a reasoned analysis may be found "arbitrary and capricious" and may be set aside by a reviewing court. 5 U.S.C. §706(2)(A).

Appeals Court Decision

In response to the district court's 2004 decision, the Commission took immediate action to bring its regulations into compliance, while it simultaneously appealed certain portions of the court's ruling. Specifically, the Commission asked the appeals court to overturn the district court's invalidation of the coordinated communications content test; the definitions of "solicit" and "direct"; the requirement that electioneering communications be distributed for a fee; the provisions for paying the salaries and wages of state party committee employees; and the exemption allowing certain *de minimis* federal election activity (FEA)¹ expenses to be paid for entirely with Levin funds.²

Although the appeals court affirmed the district court's decision to invalidate each of the regulations addressed in the Commission's appeal, its rationale for doing so differed in some instances. While the district court concluded that the Commission's rules on coordinated communications, salary allocation

¹ FEA is a specifically defined term created by the BCRA that triggers certain payment and reporting requirements. 11 CRF 100.24(b).

² Levin funds, a type of nonfederal funds raised only by state, district or local political party committees, are limited to donations of \$10,000 per calendar year and may be raised from sources otherwise prohibited by the Federal Election Campaign Act (except foreign nationals). 11 CFR 300.31.

and the *de minimis* exception failed *Chevron* review, the appeals court found only the justification for the rules lacking under the APA. The courts agreed that regulation of electioneering communications and the definitions of “solicit” and “direct” failed *Chevron* review.

After the D.C. Circuit declined to rehear the appeal *en banc*, the Commission announced that it would expedite work on the affected regulations and complete the necessary revisions in time to be effective during the 2006 election cycle. By the end of 2005, the Commission had approved final rules in four rulemakings.³ The sections that follow detail the Commission’s progress.

De Minimis Exemption for the Disbursement of Levin Funds by State, District and Local Party Committee

Of the five regulations considered by the appeals court, the “*de minimis* exemption” was the first to be revised. The Commission had created the exemption to permit state, district or local party committees whose disbursements for certain types of FEA aggregate \$5,000 or less in a calendar year to pay for those expenses entirely with Levin funds. 11 CFR 300.32(c)(4).

In January 2005, the Commission approved an NPRM to eliminate or modify the exemption. On November 10, 2005, after considering public comments and the appeals court’s decision upholding the district court’s conclusion, the Commission promulgated final rules that eliminate the \$5,000 *de minimis* exemption. The revised rules require state, district and local committees and organizations of political parties to pay for the affected types of FEA either entirely with federal funds or with an allocation of federal and Levin funds without regard to their total amount of annual disbursements. The rules took effect on December 19, 2005.

Salaries and Wages of State, District and Local Party Committees

On December 1, 2005, the Commission voted to amend its rules to permit state, district and local party committees to pay as allocable administrative expenses the salaries, wages and fringe benefits of employees who spend 25 percent or less of their compensated time in a month on FEA or activity in connection with a federal election (“covered employees”). The Commission’s vote culminated a rulemaking process that began with approval of an NPRM on April 28, 2005, followed by a public hearing on August 4, 2005.

After considering public comments and testimony from a public hearing and the *Shays* courts’ decisions, the Commission issued final rules that:

- Require state party committees either to pay the salaries and wages of covered employees entirely from a federal account or allocate the salaries and wages between their federal and nonfederal accounts as administrative costs using the allocation ratios at 106.7(d)(2)(i) through (iv);
- Establish that salaries and wages paid to employees who spend none of their compensated time in a given month on FEA or activities in connection with a federal election may be paid entirely with nonfederal funds;
- Allow state party committees to use federal funds raised at a federal/nonfederal fundraiser to pay for FEA provided that the direct costs of the fundraiser are paid entirely with federal funds or are allocated according to the “funds received” method; and
- Make clear that a state party committee that raises only federal funds at a fundraising activity must pay the entire direct costs of the fundraising activity with federal funds.

The revised rules also supersede AO 2003-11 to the extent that it allowed party committees to pay fringe benefits using only nonfederal funds. The rules now require committees to pay fringe benefits as administrative expenses.

Electioneering Communications

On December 15, 2005, the Commission approved revised rules on electioneering communications (EC) to comply with the *Shays* decisions. The vote was

³ The Commission concluded the final five rulemakings by April 7, 2006.

the culmination of a rulemaking process that began with the issuance of an NPRM in August 2005, and included a public hearing on October 20, 2005. Also during the year, the Commission issued an AO applying the press exemption to the EC rules, and the Supreme Court agreed to hear Wisconsin Right to Life's challenge of the ban on corporate financing of ECs.

Rulemaking

The revised EC rules eliminate an exemption for 501(c)(3) organizations and redefine "publicly distributed" to exclude the requirement that ECs be distributed "for a fee."

In order to qualify as an EC a communication must be "publicly distributed." The Commission had defined "publicly distributed" as "aired, broadcast, cablecast, or otherwise disseminated *for a fee*." 11 CFR 100.29(b)(3)(i) (emphasis added). In its final rules, the Commission removed "for a fee" from the regulatory definition so that any communication "aired, broadcast, cablecast or otherwise disseminated through the facilities of a television station, radio station, cable television system or satellite system," if not otherwise exempted, is subject to EC regulations.⁴

Advisory Opinion

In AO 2005-19, the Commission ruled on the application of the press exemption to ECs. The Commission determined that an incorporated production company may broadcast a radio program that references clearly identified federal candidates, even if it airs within 30 days of a primary election or 60 days of a general election in the jurisdiction in which those candidates are running, because its proposed activities fall within the press exemption.

Corporations are generally prohibited from making or financing ECs. However, the EC definition exempts communications that appear in "a news story, commentary, or editorial distributed through the facilities of any broadcast, cable, or satellite television or radio station." Additional restrictions apply if these facilities are owned or controlled by a political party, political committee or candidate. 11 CFR 100.29(c)(2). The Commission concluded that the

production company qualifies for the press exemption and may finance its programs by selling advertising time.

Wisconsin Right to Life v. FEC

On September 27, 2005, the Supreme Court agreed to hear Wisconsin Right to Life's challenge to the ban on corporate financing of ECs. The plaintiff asked the Court to find the ban unconstitutional as applied to certain grass-roots lobbying activities. Earlier in the year, a three-judge panel of the U.S. District Court for the District of Columbia had dismissed the case, with prejudice, finding that the Supreme Court's decision in *McConnell* precluded the plaintiff's challenge.⁵

Definition of "Solicit" and "Direct"

As noted above, the *Shays* courts held that the Commission's definitions of "to solicit" and "to direct" were invalid under *Chevron*. To comply with the court decisions, the Commission published an NPRM on September 28, 2005. At its November 15, 2005, public hearing, the Commission heard testimony from witnesses supporting and opposing the proposed rules.⁶

Coordinated Communications

On December 8, 2005, the Commission approved an NPRM proposing changes to the so-called "content prong" of the three-part regulatory test for coordinated communications. 11 CFR 109.21(c)(4). The proposed rules comply with the *Shays* decisions that invalidated one aspect of the content prong.

To satisfy the content prong a communication must either be:

- An electioneering communication;
- A republication of candidate materials;
- An express advocacy message; or

⁵ The case was argued on January 17, 2006, and remanded to the district court on January 23, 2006.

⁶ The Commission published revised definitions of "solicit" and "direct" in the *Federal Register* on March 20, 2006 (71 FR 13926). The rules took effect on April 19, 2006.

⁴ The revised EC rules took effect on January 20, 2006.

- A public communication that refers to a federal candidate and is publicly distributed to voters in his/her district within 120 days of the election.

The district court in *Shays* found that the content prong failed *Chevron* review. The appeals court disagreed, concluding, instead, that “no persuasive justification for . . . the 120-day timeframe,” had been supplied.

In response to the court’s decision, the Commission published an NPRM that presented seven alternatives to address the court’s concerns. The options include retaining the current rule but revising the E&J to further justify the 120-day timeframe, amending the 120-day timeframe to one which is more inclusive of public communications intended to influence federal elections and eliminating the content standard altogether.⁷

Definition of Federal Election Activity (FEA)

As part of its *Shays* decision, the district court invalidated portions of the definition of FEA that describe voter registration activity, get-out-the-vote activity (GOTV) and voter identification. With regard to voter registration and GOTV, the court found the definitions were improperly promulgated under the APA because the initial NPRM did not indicate that the definitions would be limited to activities that “assist” individuals in registering or voting. The court also invalidated the portion of the current definition of GOTV that excludes communications by associations or similar groups of state or local candidates and/or officeholders that refer only to state or local candidates. With regard to the existing definition of voter identification, the court invalidated the exclusion of voter list acquisition and of the activities of groups of state and local candidates/officeholders.

The Commission proposed rules to conform to the court’s ruling and held a public hearing on August 4, 2005, to receive testimony on its proposals.⁸

⁷ The Commission voted to approve final rules on coordinated communications on April 7, 2006.

⁸ The Commission published revisions to the definition of “FEA” in the *Federal Register* on February 22, 2006 (71 FR 8926). The Commission published interim final rules on the definition of “FEA” on March 22, 2006 (71 FR 14357). Both final and interim rules were effective March 24, 2006.

Definition of “Agent”

In another *Shays* rulemaking, the Commission approved an NPRM on January 27, 2005, requesting comments on how the Commission should respond to the district court’s concerns about the definitions of “agent” used in the regulations on coordinated and independent expenditures and the regulations regarding nonfederal funds. The NPRM proposed several alternatives to conform to the district court’s decision in *Shays*, including retaining the existing rule and revising its Explanation and Justification.

The existing regulations defined agent as “any person who has actual authority, either express or implied” to perform certain, specified actions, but did not include persons acting only with apparent authority. 11 CFR 109.3 and 300.2(b). The Commission held a public hearing on May 17, 2005, to receive testimony on the proposed rules.⁹

Candidate Solicitation at State, District and Local Party Fundraising Events

Under the Act, federal candidates, officeholders and their agents may not solicit, receive, direct, transfer or spend nonfederal funds in connection with federal or nonfederal elections. However, the Act permits them to speak or be featured guests at state, district and local party fundraisers, where nonfederal funds may be raised.

The Commission had promulgated regulations that permit federal candidates and officeholders to speak at such fundraisers “without restriction or regulation.” However, in *Shays* the district court found that, although this regulation was a permissible interpretation of the statute, the Commission had not satisfied the APA’s “reasoned analysis” requirement.

In response, the Commission approved an NPRM on February 14, 2005, seeking comments on proposals either to revise the Explanation and Justification (E&J) for this rule or to revise the rule itself. On May 17, 2005, the Commission held a public hearing to receive testimony on the proposals. Having consid-

⁹ The revised E&J on the definition of “agent” was published in the *Federal Register* on January 31, 2006 (71 FR 4975). The final rules were effective on January 31, 2006.

ered that feedback, the Commission chose to keep the existing regulation, and revise the E&J to explain more fully its rationale.

The Commission also considered several AOs during 2005 that applied the restrictions on nonfederal activity by federal candidates. (Please refer to the section on Soft Money for more details on these AOs.)

Internet Communications

The district court in *Shays* held that the Commission's definitions of "public communication" and "generic campaign activity" impermissibly exclude all Internet communications. On March 24, 2005, the Commission approved proposed rules that would define paid Internet ads as "public communications." The NPRM also republished and invited comments on the current definition of "generic campaign activity." In addition, the Commission addressed the application of the press exemption to web sites in AO 2005-16.

Rulemakings

The proposed addition of paid Internet ads to the definition of "public communication" would affect all other Commission rules that incorporate the term "public communication." In addition to the definition of "generic campaign activity," these would include rules governing state, district and local party committees and disclaimers.

The NPRM also invited comments on proposals to:

- Modify the Commission's rules as to which Internet communications require disclaimers;
- Add new rules specifically excepting certain volunteer activity on the Internet from the definitions of "contribution" and "expenditure"; and
- Expressly exempt from the definitions of "contribution" and "expenditure" certain media activity over the Internet.

The rules proposed in the NPRM were intended primarily to ensure that political committees properly finance and disclose their Internet communications, without impeding individual citizens from using the Internet to speak freely regarding candidates and elections.

On June 28 and 29, 2005, the Commission hosted public hearings on its proposed rules. Twenty witnesses, including bloggers, students, economists, campaign finance attorneys and representatives from non-profit political organizations, offered opinions as to how the proposed rules could affect Internet activity.¹⁰

Advisory Opinion

In AO 2005-16, the Commission decided that the costs that a limited liability company (LLC) incurs to cover or carry news stories, commentary or editorials on its web sites are encompassed by the press exemption, and therefore do not constitute "expenditures" or "contributions" under the Act and Commission regulations.

The Act and FEC regulations define "contribution" and "expenditure" to include "anything of value made by any person for the purpose of influencing" a federal election. 2 U.S.C. §431(8)(A)(i) and (9)(A)(i). Costs incurred in covering or carrying news stories, editorials and commentary by any broadcasting station, newspaper or magazine are exempt from these definitions. 11 CFR 100.73 and 100.132; 2 U.S.C. §431(9)(B)(i). This exemption is commonly known as the "press exemption."

To be eligible for the press exemption, the entity first must qualify as a press entity and act as a press entity in conducting the activity at issue. The Commission considers whether the entity's materials are available to the general public and are comparable in form to those it ordinarily issues. Second, the entity must not be owned or controlled by a candidate, political committee or political party. The Commission found that the requesting LLC qualifies as a press entity, noting that:

- Its web sites are available to the general public and are the online equivalent of a newspaper, magazine or other periodical publication;
- A primary function of the web sites is to provide news and information to readers;

¹⁰ The Commission published final rules on Internet communications in the *Federal Register* on April 12, 2006 (71 FR 18589). The effective date for the final rules was May 12, 2006.

- The LLC retains editorial control, produces many of the stories that appear on the web sites and exercises day-to-day control over all content; and
- Reader comments are similar to letters to the editor.

Moreover, the LLC is neither owned nor controlled by any political party, political committee or candidate. The operation of its web sites is at the core of its activities as a press entity.

Payroll Deductions for Contributions to Trade Association SSF

On July 14, 2005, the Commission voted to revise its rules to allow corporate members of a trade association to provide incidental services, including the use of a payroll deduction or checkoff system, to collect and forward voluntary employee contributions to the trade association's separate segregated fund (SSF). The rules require any member corporation that provides such incidental services, and the corporation's subsidiaries, divisions, branches and affiliates, to make the same services available to a labor organization representing employees of the corporation or the corporation's subsidiaries, divisions, branches or affiliates, at cost, upon written request of the labor organization.

The revised rules recognize the special relationship between an association and its corporate members. A trade association has long been permitted to solicit contributions to its SSF from a corporate member's stockholders and executive and administrative personnel and their families (the restricted class), so long as the corporation approves the solicitation ahead of time and does not approve a solicitation by any other trade association for the same calendar year. Before this rulemaking, however, the regulations did not allow member corporations to use a payroll deduction or checkoff system to collect contributions for a trade association PAC.

The Commission's action came in response to a rulemaking petition from America's Community Bankers and its SSF, the America's Community Bankers Community Campaign Committee. Public comments on the petition and the Commission's proposed rules supported the change.

Contributions

Under the Act, individuals and groups are limited in the amounts they may contribute to candidates for federal office and to the political committees which support them. 11 CFR 110.1, 110.2, and 110.3. Further, political committees may not retain contributions that exceed the donor's contribution limit. In 2005, the Commission closed two enforcement matters regarding contribution limits and prohibitions and revised its rules on contributions from minors in response to the *McConnell v. FEC* decision.

Contributions in the Name of Another and Corporate Contributions

In MUR 5405, the Commission entered into a conciliation agreement with APEX Healthcare Inc. (APEX) and its President and sole shareholder, James Chao. In the agreement, the Company and Mr. Chao agreed to pay a civil penalty of \$275,000 for violations of the Act, including corporate contributions and contributions in the name of another.

The Commission found that in 2003 APEX and Mr. Chao used corporate funds to reimburse \$69,500 in contributions that were made in the names of others to Hynes for Senate (the committee for Daniel Hynes' Democratic primary campaign in Illinois) and made a direct \$1,500 in-kind contribution to the committee. APEX and Mr. Chao also used corporate funds to reimburse a total of \$6,000 in contributions that were made in the names of others to three other federal political committees in 2002.

The Act prohibits corporations from making contributions or expenditures from their general treasury funds in connection with any election of any candidate for federal office. The Act also prohibits any officer or director of any corporation from consenting to any expenditure or contribution by the corporation. 2 U.S.C. §441b(a). In addition, it is unlawful for any person to make a contribution in the name of another, or for any person knowingly to permit his or her name to be used to make such a contribution. 2 U.S.C. §441f. In the conciliation agreement, APEX and Mr. Chao admitted to violating the Act by reimbursing contributions with corporate funds and by making an in-kind contribution with corporate funds. Additionally,

the Commission found reason to believe Mr. Chao's violations were knowing and willful, though Mr. Chao neither admitted nor denied that the violations were knowing and willful in the conciliation agreement.

The Commission found no reason to believe that the Hynes for Senate committees was aware of the actual source of the funds, and took no action with respect to the other three recipient committees. They have been instructed to disgorge the illegal contributions to the U.S. Treasury. The FEC also admonished Hynes for Senate for failing to report an in-kind contribution it received, and also admonished the conduits used for the corporate contributions for knowingly allowing their names to be used as donors for the corporate reimbursements.

This conciliation agreement involves the first knowing and willful violations of section 441f of the Act that the Commission has settled through conciliation under the new BCRA provisions. The BCRA imposed a new minimum civil penalty equal to 300 percent, and a new maximum civil penalty equal to 1,000 percent, of the amount in violation in cases where the Commission believes a knowing and willful violation has been committed. Prior to the passage of the BCRA, the civil penalty for knowing and willful violations of the Act was not subject to a statutorily mandated minimum amount, and the maximum civil penalty that could be sought was equal to 200 percent of the amount in violation.

Excessive and Prohibited Contributions

In MUR 5428, the Commission entered into a conciliation agreement with the Republican Party of Arkansas (the Committee) and Charles Mazander, as the Committee's treasurer. This agreement stems from an investigation that was initiated following a Commission audit of the Committee.¹¹

¹¹ As part of MUR 5428, the Commission also reached a conciliation agreement with Potlach Corporation, which violated the Act by making a corporate contribution. The contribution was later refunded. 2 U.S.C. §441b(a). Potlach Corporation agreed to pay a \$2,500 civil penalty and to disgorge to the U.S. Treasury an amount equal to the \$5,000 refunded contribution.

The Commission found multiple violations of the Act during the 1999-2000 election cycle, including the Committee's acceptance of excessive and prohibited contributions, its failure to properly account for more than \$2 million in media and other expenses for joint federal and nonfederal activity which resulted in the excessive use of impermissible funds for those expenses, and its failure to submit required disclosure information to the Commission and to maintain required records. The agreement required payment of a \$360,000 civil penalty and further required the Committee to submit annual independent financial audits at Committee expense for five years.

The Act prohibits political committees from knowingly accepting contributions in excess of the Act's limitations. 2 U.S.C. §441a(f). During the 1999-2000 election cycle, the Committee received contributions totaling \$28,500 from six individuals that exceeded the contribution limits. The Committee did not refund these contributions or pursue other remedies.

The Act also prohibits a political committee from knowingly accepting or receiving prohibited contributions, including corporate contributions. 2 U.S.C. §441b(a). During this election cycle, the Committee accepted prohibited corporate contributions from two sources totaling \$11,500.

Final Rules on Contributions by Minors

On January 27, 2005, the Commission approved final rules regarding contributions and donations by minors to candidates and political committees. The rules, which took effect on March 7, 2005, conform to the Supreme Court's decision in *McConnell v. FEC*. In that decision, the Court found unconstitutional a provision of the BCRA that barred minors from making contributions to candidates or from making contributions or donations to political party committees.

The practical effect of the amended regulations is to return the rules to their pre-BCRA state. The final regulations provide that an individual under 18 years old may make contributions to candidates and party committees if:

- The decision to contribute is made knowingly and voluntarily by the minor;
- The funds, goods or services contributed are owned or controlled by the minor, such as income earned

by the minor, proceeds from a trust for which he or she is a beneficiary or funds withdrawn by the minor from a financial account opened and maintained in his or her name; and

- The contribution is not made from the proceeds of a gift given for the purpose of making the contribution and is not in any other way controlled by another individual. 11 CFR 110.19.

Note that the Commission has made one substantive change from the pre-BCRA regulations by removing the requirement that a minor “exclusively” own or control the funds, goods or services contributed. Maintaining the exclusivity requirement would have limited some minors from contributing their personal funds simply because they maintained their financial accounts in a place where an adult co-signatory was required for such accounts.

Political Committee Status, Definition of Contribution and Allocation for PACs

During 2005, the Commission was involved in four lawsuits related to political committee status. Three of the four arose from a rulemaking in 2004 that required groups to treat as federal funds the proceeds of solicitations that indicate receipts will be used to support a federal candidate. The new rules also increased the proportion of federal funds committees must use when paying for certain allocable expenses. These regulatory changes could trigger FEC registration for some groups that previously have not qualified as political committees.

EMILY’s List, a registered nonconnected committee, initiated a court challenge against the rules contending, in part, that the Commission had exceeded its authority. Almost simultaneously, the Congressional sponsors of the BCRA and the Bush/Cheney campaign filed suit arguing that the Commission had not gone far enough to reign in campaign activity by unregistered groups.

Meanwhile, in September 2005, the Commission itself filed a lawsuit challenging the Club for Growth’s failure to register as a political committee.

EMILY’s List v. FEC

The EMILY’s List suit alleged that the Commission’s solicitation and allocation rules violate the APA and the First Amendment, and asked the court to enjoin the Commission from administering or enforcing the regulations.

Specifically, the rules in question define as “contributions”:

- All funds received in response to a communication that indicates that any portion of the funds received will be used to support or oppose the election of a clearly identified federal candidate; and
- At least 50 percent of the funds received from such a communication if it refers to both federal and nonfederal candidates.

The rules also provide that a PAC that maintains federal and nonfederal accounts must use at least 50 percent federal funds to pay for administrative and voter drive expenses and the costs of public communications that refer to a political party, but not to any clearly identified candidate. Voter drives and communications that refer to a clearly identified federal candidate, but no clearly identified state candidate, must be paid for entirely with federal funds.

On February 25, 2005, the U.S. District Court for the District of Columbia denied EMILY’s List’s request for a preliminary injunction, and on December 22, 2005, the U.S. Court of Appeals for the District of Columbia Circuit upheld that decision.

In denying the preliminary injunction, the district court concluded that there was not a substantial likelihood that EMILY’s List would win the case on its merits, nor would it or other interested parties suffer irreparable injury if the injunction were not granted. Ultimately, the district court wrote, “the interests of both Defendant and the public would be disserved by the granting of Plaintiff’s motion.” Thus, the court ordered that EMILY’s List’s motion for a preliminary injunction be denied, and the D.C. Circuit later held that the district court had not abused its discretion in denying the injunction.

The case on the merits was fully briefed and pending before the district court at year’s end.

Advisory Opinion

After the Court denied its motion for preliminary injunction regarding the new regulations, EMILY's List requested an AO to clarify the application of the new rules to its activities. In AO 2005-13, the Commission determined that EMILY's List must use federal funds to pay for at least half of its administrative and generic voter drive expenses and communications that refer to a political party. Communications that refer to a clearly identified federal candidate must be financed exclusively with federal funds. In addition, EMILY's List must treat as federal contributions the proceeds of any communication that indicates a portion of the funds received will be used to support the election of a clearly identified federal candidate.

Shays and Meehan v. FEC (Shays II) and Bush-Cheney '04 v. FEC

While EMILY's List argued that the Commission's rules exceeded the agency's authority, the Congressional sponsors of the BCRA and the Bush-Cheney campaign filed suit against the FEC for failing to issue more restrictive regulations interpreting the statutory definition of "political committee," especially as applied to nonprofit organizations that qualify for tax exemption under 26 U.S.C. §527. (See November 2004 *Record*.) In 2005, summary judgment briefs were submitted from both sides, but the case remained pending at year's end.

FEC v. Club for Growth, Inc.

On September 19, 2005, the Commission asked the U.S. District Court for the District of Columbia to find that Club for Growth, Inc. violated the Act by failing to register with the FEC after meeting both the statutory definition of "political committee" and the "major purpose" test established by the Supreme Court.

The Act requires groups that receive contributions or make expenditures in excess of \$1,000 during a calendar year, to register as a political committee. 2 U.S.C. §§ 431(4), 433. In its landmark *Buckley v. Valeo* decision, the Supreme Court further defined the term "political committee" to include groups whose major purpose is to influence the election of candidates to office. 424 U.S. 1, 79 (1976).

Based on an investigation triggered by an administrative complaint, the Commission determined that the Club met the \$1,000 threshold for registration as a political committee by spending millions of dollars on federal campaign activity during the 2000, 2002 and 2004 election cycles, and by soliciting funds from donors indicating their funds would be spent to help elect or defeat specific federal candidates. The Club encouraged large donations from federally prohibited sources, and accepted many contributions from individuals that exceed the Act's \$5,000 per year contribution limit on contributions to political committees. Some of the Club's solicitations clearly indicated that the funds received would be used to support or oppose specific federal candidates. As a result, those contributions apply towards the political committee registration threshold. See *FEC v. Survival Education Fund, Inc.*, 65 F.3d 285, 295 (2d Cir. 1995).

The Commission found that the largest component of the Club's expenditures during the last three election cycles was political advertising, and that many of its ads contained messages that expressly advocated the election or defeat of clearly identified federal candidates. Based on those ads alone, the Commission alleges that the Club triggered political committee status in August 2000, at the latest.

The case was pending at year's end.

Millionaires' Amendment

On July 26, 2005, the Commission announced civil penalties totaling \$54,000 in the first two enforcement cases to arise from the so-called "Millionaires' Amendment." Enacted as part of the BCRA, the Millionaires' provision increases, in some cases, the individual contribution limits and the coordinated party expenditure limits for qualified candidates whose opponent's personal spending on the campaign exceeds certain threshold amounts.

Background

Under the Millionaires' provisions, a candidate registering to run for a House or Senate seat must disclose on his/her Statement of Candidacy (FEC Form 2) the amount by which he/she expects to exceed the applicable \$350,000 personal spending threshold. 2

U.S.C. §434(a)(6)(B)(ii); 2 U.S.C. §441a-1(b)(1)(B); 11 CFR 400.20.¹² Then, within 24 hours after exceeding the personal spending threshold, the candidates (or their campaign committees) must notify the Commission, and each opposing candidate. House candidates must also notify the national party committee of each candidate in the election. The opposing candidates then use that information to calculate the “opposition personal funds amount” (OPFA), which compares the overall funding of the campaigns to determine whether they qualify for increased limits.

Under the Millionaires’ provisions, an expenditure of personal funds includes not only direct candidate expenditures in connection with the campaign but also campaign loans secured by the candidate’s personal funds. In addition to including loan amounts in a potential Form 10 filing, under the Act’s reporting requirements, political committees must report all loans on Schedule C and file a Schedule C-1 with the first report due after a new loan is obtained by either the committee or the candidate to demonstrate that the loan was obtained in accordance with normal lending practices.

MUR 5623

On July 18, 2005, the Commission entered into a conciliation agreement with the Mike Crotts for Congress Committee, Inc. and Vicki Gibbs, in her official capacity as committee treasurer (Respondents). The agreement established that Mr. Crotts failed to complete the declaration of intent to expend personal funds when he registered as a candidate. Further, after receiving a letter from RAD notifying him of the omission and filing an amended form declaring his intent to spend no personal funds above the threshold, the Crotts campaign received a \$400,000 bank loan drawn on Mr. Crotts’s personal home equity line of credit. Although the loan amount exceeded the \$350,000 personal spending threshold, the required FEC Form 10 was not filed in a timely manner, and then only after further correspondence from RAD. In

addition, the campaign committee did not subsequently file the required Schedule C-1 disclosing the details of the loan.

The conciliation agreement requires the Respondents to pay a civil penalty of \$40,000 and to cease and desist from future violations of the Millionaires’ provisions and other regulations involved in this case.

MUR 5488

On July 12, 2005, the Commission entered into a conciliation agreement with Brad Smith for Congress, James Bailey in his official capacity as treasurer and Bradley Smith (Respondents). According to the agreement, Mr. Smith’s opponent, Gene DeRossett, expended \$451,000 in personal funds and subsequently filed the required Form 10. In calculating the OPFA, the Respondents used the correct formula, but they mistakenly included only net loans from the candidate to determine Mr. Smith’s own personal expenditures, rather than the gross amount of those loans. By using the lesser amount in the calculation, the Respondents erroneously believed they were eligible for increased contribution limits and, in fact, accepted \$40,500 in contributions above the correct limits.

The agreement requires the Respondents to refund or obtain reattribution for all contributions they received that exceeded the correct limits, to pay a civil penalty of \$14,000 and to cease and desist from violating 2 U.S.C. §441a(f).

Soft Money

With limited exceptions, the BCRA barred national party committees, federal candidates and officeholders from raising or spending soft money. In 2005, several federal officeholders requested AOs from the Commission asking for permission to raise funds outside of the limitations and prohibitions of the Act for nonfederal campaigns. Based on various exceptions, most were able to do so.

In AO 2005-2, Senator Jon Corzine qualified for the regulatory exemption that allows a federal candidate/officeholder to raise funds outside of the limitations and prohibitions of the Act for his/her own nonfederal campaign, in this case for governor. However, the

¹² Note that the threshold amount for House candidates is \$350,000, while the threshold amounts for Senate races vary based on the voting-age population of the state.

exemption is limited to the federal candidate's own campaign and the Commission determined that any funds the Senator and his agents raise for other state and local candidates or committees must comply with federal law. Commission regulations do allow federal candidates and officeholders to appear at a state or local party fundraiser and solicit donations without regard to the amount limitations and source prohibitions of the Act.

The Commission reached similar conclusions in AO 2005-5, determining that U.S. Representative Ray LaHood, a federal candidate and officeholder exploring a gubernatorial candidacy, could use funds remaining in his gubernatorial exploratory committee's account to make donations in connection with nonfederal elections because the funds in this account were raised in accordance with the applicable provisions of state law and with the Act's contribution limits and source prohibitions. Exploratory committee funds could also be refunded to donors and donated to charitable organizations that do not engage in election activity.

Finally, in AO 2005-12 the Commission ruled that U.S. Representative Fattah could raise and spend funds for his potential mayoral campaign that exceed the Act's contribution limits. The funds must only be raised and spent for activities that refer to his candidacy for mayor of Philadelphia and/or others seeking that office and the amounts and sources of the funds must be consistent with state law.

The Commission also received an AO request from two federal candidates/officeholders interested in raising nonfederal funds for state ballot initiatives not related to their own campaigns. In AO 2005-10 the Commission concluded that U.S. Representatives Howard L. Berman and John T. Doolittle could solicit nonfederal funds for ballot measure committees formed solely to support or oppose ballot initiatives on the California special election ballot. (No federal candidates were on the ballot in the special election.) The ballot measure committees were not directly or indirectly established, financed, maintained or controlled by Representative Berman or Representative Doolittle, by anyone acting on their behalf or by any political party committee.

Chapter Four

Presidential Public Funding

Public funding has been a key part of our Presidential election system since 1976. The program is funded by the \$3 tax checkoff and administered by the FEC. Through the public funding program, the federal government provides matching funds to candidates seeking their party's Presidential nomination, financing for Presidential nominating conventions and grants to Presidential nominees for the general election campaigns. For the 2004 Presidential elections, the Commission certified ten candidates and two convention committees eligible to receive public funding.

2004 Shortfall

In past Presidential election cycles, the Presidential Election Campaign Fund (the Fund) experienced a temporary shortfall in matching funds, requiring the Fund to make pro-rata payments to candidates until sufficient deposits were received. For several years, the Commission has urged Congress to help alleviate the shortfall problem. Possible solutions have included increasing the checkoff amount and revising the "set aside" provision under which funds must be set aside for general election and convention financing before any monies can be used for primary matching payments.

Early projections by the Commission indicated that January 2004 payments to eligible candidates in the 2004 primaries could be less than 20 percent of the amount certified, even if one major party candidate did not take federal matching funds. However, three major party candidates—Howard Dean, John Kerry and President Bush—chose not to participate in the matching payment program, and the U.S. Treasury successfully made the January payments of \$15.4 million to six eligible Presidential candidates. The only shortfall that occurred in the 2004 cycle took place in February, when candidates received approximately 46 cents per dollar certified.¹

¹ In the 2004 election, a total of eight candidates were certified for Primary Matching funds: Wesley K. Clark, John R. Edwards, Richard A. Gephardt, Dennis J. Kucinich, Lyndon H. LaRouche, Jr., Joseph Lieberman, Ralph Nader and Alfred C. Sharpton. The Commission later rescinded Rev. Sharpton's certification because he exceeded the personal expenditure limit.

The Commission projects that the fund is likely to face major deficits in timely payments in the 2008 election. The Commission is concerned that the potential for a totally open primary in both major parties in 2008 will further exacerbate the potential shortfall.

Repayment of Public Funds—2004 Election

Once a Presidential election is over, the Commission audits all of the candidates and committees that received public funds to ensure that they have used those funds only for permissible purposes and that they maintained proper records and filed accurate reports. These audits are mandated under the Presidential Primary Matching Payment Account Act (Matching Fund Act) and Presidential Election Campaign Fund Act. An audit may find that a candidate or committee exceeded its expenditure limits, spent funds on nonqualified campaign expenses or ended the campaign with a surplus. In such instances, the Commission may require the candidate or committee to repay the U.S. Treasury. The Commission may also determine that repayment is required if it finds that contributions initially thought to be matchable were later determined to have been nonmatchable. Such determinations may or may not result from the FEC's audit of the committee.

The FEC plans to make final determinations in 2006 regarding the repayment amounts for publicly funded candidates in the 2004 Presidential elections. During 2005, the Audit Division completed preliminary audit reports for six of the eight publicly-funded primary candidates who ran in 2004. The Commission also completed preliminary audit reports for the two convention committees and the two host committees.

Sharpton Committee

On December 9, 2005, Alfred C. Sharpton agreed to repay the \$100,000 in public funds he had received in 2004 under the Matching Fund Act, plus interest. In March 2004, the Commission certified that Rev. Sharpton's committee was eligible to receive an initial \$100,000 in matching funds. Since the committee's disclosure reports revealed that Rev. Sharpton was close to exceeding the \$50,000 personal expenditure limitation, the Commission opened an investi-

gation to resolve whether he had exceeded this limitation. After the committee filed a disclosure report containing information suggesting that the candidate had exceeded the \$50,000 personal expenditure limitation, the Commission suspended further matching fund payments to the Sharpton committee, pending an administrative review.

During that review, the Commission determined that Rev. Sharpton knowingly and substantially exceeded his personal expenditure limitation prior to his application for matching funds. All matching funds received by Rev. Sharpton were in excess of his entitlement because Rev. Sharpton was never eligible to receive matching funds. Therefore, in April 2005, the Commission determined that Rev. Sharpton must repay the \$100,000 plus interest to the U.S. Treasury.

Chapter Five

The Commission

Commissioners

During 2005, Scott Thomas served as Chairman of the Commission and Michael Toner served as Vice Chairman. On December 15, 2005, the Commission elected Commissioner Michael Toner as its Chairman and Commissioner Danny Lee McDonald as its Vice Chairman for 2006. In August of 2005, Commissioner Bradley A. Smith resigned from the Commission.¹

For biographies of the Commissioners and statutory officers, see Appendix 1.

Inspector General

Under the Inspector General Act, the Commission's Office of the Inspector General (OIG) is designed to prevent and detect fraud, waste and abuse in agency programs and promote economy, effectiveness and efficiency within the Commission. The OIG carries out its responsibilities by conducting and supervising audits, investigations and other inquiries relating to Commission programs and operations.

In 2005, the OIG completed two audits, which included an audit of the FEC's disclosure process and the annual financial statement audit. The objectives of the OIG's audit of the disclosure process were to determine the extent, if any, of disclosure differences between candidate contributions reported by political committees and related political committee contributions reported by recipient candidate committees, and also to assess whether an adequate process was in place to remedy any reporting discrepancies. In addition, the OIG completed an audit of the FEC's fiscal year (FY) 2005 financial statements. The financial statement audit was conducted by an inde-

pendent public accounting firm hired and monitored by the OIG. The Commission is required by the Accountability of Tax Dollars Act of 2002 to prepare and submit audited annual financial statements.

The OIG also completed audit follow-up work that resulted in the closure of twelve outstanding audit recommendations originally reported in the OIG's FY 2004 financial statement audit report on internal controls. In addition to conducting the aforementioned audits and the audit follow-up, the OIG also responded to several hotline complaints as well as opened and closed investigations in 2005.

Equal Employment Opportunity (EEO)

The FEC is committed to the principle of equal employment opportunity regardless of race, color, sex, religion, national origin, age, disability, sexual orientation, political affiliation and parental status. The FEC's goal is to be a model employer, reflecting the values of fairness and integrity in our everyday operations.

Responsibility for guiding the Commission's EEO program is centered on the agency's EEO Director. The Commission provides policy leadership for the EEO program and sets a high level of expectation for the entire workforce to maintain a workplace free from discrimination, harassment and reprisal. Early resolution of disputes that may arise is an important emphasis of the FEC's approach to EEO issues.

The Commission reports on its progress on becoming a model EEO employer in annual reports to the United States Equal Employment Opportunity Commission and the United States Office of Personnel Management. The FEC EEO Office also maintains a web page to communicate information to its employees. The EEO Director consults with the Human Resources Director to ensure that employee recruitment reaches an audience reflecting the diversity of our nation.

Ethics

Staff members in the General Counsel's office serve as the Commission's ethics officials. Dissemination of information to FEC employees regarding compliance with the Ethics in Government Act re-

¹ Three new Commissioners were nominated to the FEC at the close of 2005. Robert D. Lenhard, Hans A. von Spakovsky and Steven T. Walther were nominated by President George W. Bush on December 16, 2005, and appointed by the President on January 4, 2006. Commissioner David Mason was reappointed by President Bush. Commissioners Scott Thomas and Danny Lee McDonald completed their tenure on the Commission after President Bush appointed new Commissioners to fill their expired terms. Commissioner Lenhard assumed the role of Vice Chairman for 2006.

quired a number of undertakings throughout the year. The ethics staff conducted ethics orientation sessions for all new employees and provided annual ethics briefings to employees who are required to file public and confidential financial disclosure reports. In order to protect employees against conflict of interest and to help ensure that they remain impartial in the performance of their official duties, the ethics staff also administered the financial disclosure report system. Additionally, staff provided guidance to employees on the *Standards of Ethical Conduct for Employees of the Executive Branch* and other ethics laws and regulations. Finally, ethics staff ensured the Commission's compliance with requirements of the Office of Government Ethics (OGE) by submitting the following documents to the OGE: the annual agency ethics program report and travel payment reports.

Chart 5-1
Functional Allocation of Budget

	FY 2005	FY 2006
Personnel	\$37,406,977	39,814,300
Travel/Transportation	\$495,251	439,980
Space Rental	\$4,386,000	3,895,000
Equipment Rental/Maint	\$819,700	449,859
Telephone/Postage	\$423,500	424,100
Printing	\$448,000	265,460
Training/Tuition	\$336,500	209,415
Depositions/Transcripts	\$50,000	50,000
Federal Agency Services	\$694,500	792,000
Software/Hardware	\$1,125,500	1,858,000
Contracts	\$3,316,300	3,671,737
Publications	\$518,500	536,665
Supplies	\$236,832	251,500
Equipment Purchases	\$1,401,168	1,234,249
Other	\$128,500	260,735
Total	\$51,741,728	54,153,000

FEC's Budget

The FEC's FY 2005 final appropriation was \$51,741,728 for 391 full time employees (FTE). The 2005 request proposed no additional staff and reflected a four percent cost of living adjustment for 391 FTE. The final appropriation resulted in an increase of \$1,285,136 or 2.6 percent from the FY 2004 funding level of \$50,456,592.

The Commission issued its annual Performance and Accountability Report (PAR) on November 15, 2005. The Accountability of Tax Dollars Act of 2002 extends to small agencies, such as the FEC, certain requirements for the preparation of financial statements, and it requires a full financial audit of the agency's financial management systems and internal management controls. This is the second year that the FEC was required to produce financial statements and undergo a full financial audit. The FEC committed significant resources to improving its financial systems and preparing for the second year of full financial audits.

The 2005 report contains three sections:

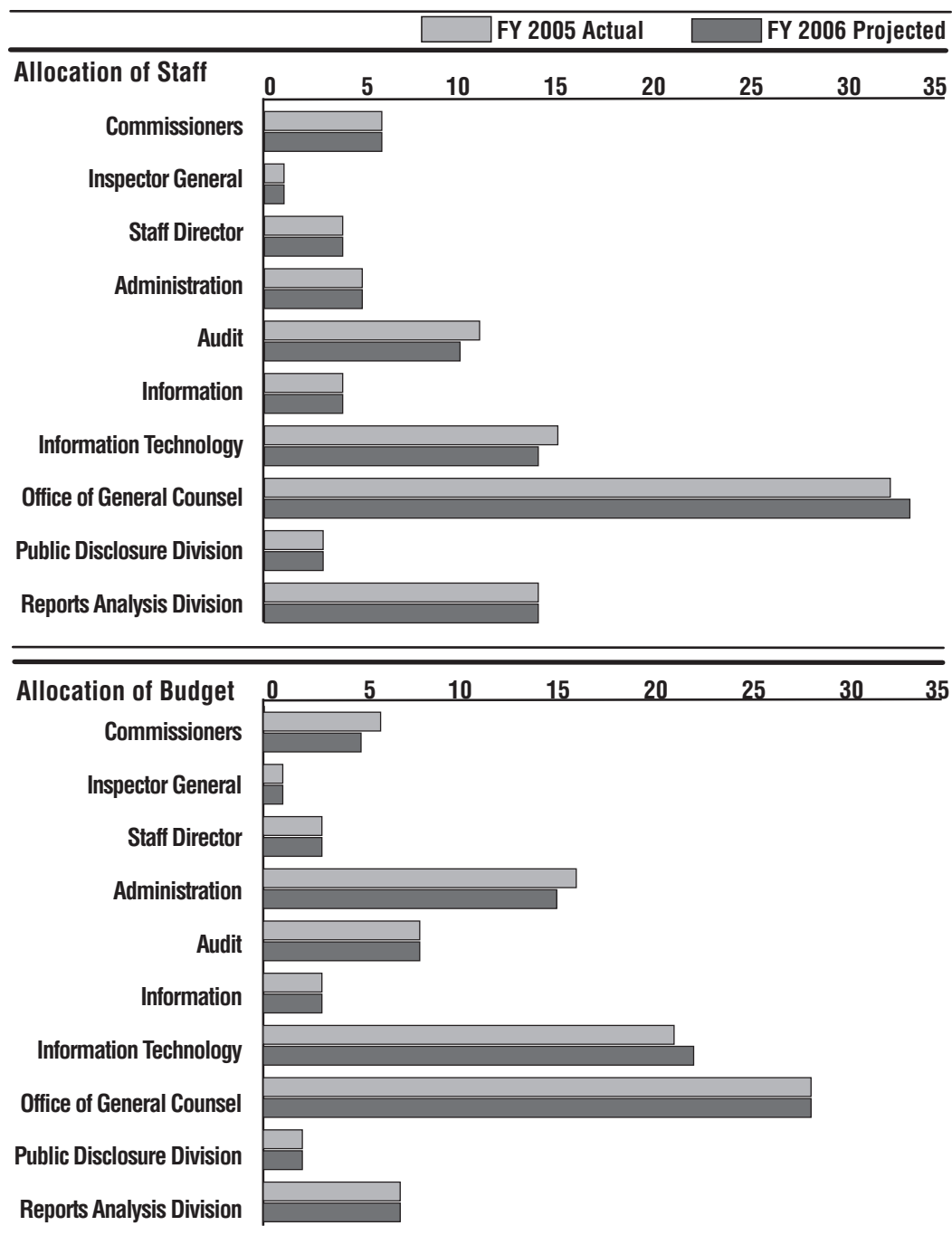
- "Management's Discussion and Analysis," which provides an overview of the financial and performance information addressed in the report;
- "Performance," which reports the FEC's accomplishments and its results in meeting its goals and objectives; and
- "Financial," which contains details on the FEC's finances.

The FEC received an unqualified opinion on all financial statements, with the exception of the statement of net cost. The FEC made great strides in its second year of producing annual audited financial statements.

Fiscal Year 2006 Budget

The FEC FY 2006 final appropriation was \$54,153,000 for 391 FTE. This reflected an increase of \$2,411,272 or approximately 4.5 percent more than the enacted FY 2005 appropriation of \$51,741,728 and 391 FTE. The FY 2006 final appropriation included a one percent rescission.

Chart 5-2
Divisional Allocation of Budget by Percentage



Changes to campaign finance law resulting from passage of the Bipartisan Campaign Reform Act of 2002 (BCRA) have had a significant effect on PACs, party committees, candidates and even individuals who participate in the process. Among other things, provisions of the BCRA changed the way that candidates and committees operate by:

- Prohibiting national party committees from raising or spending nonfederal funds, or “soft money;”
- Limiting the ability of state, district and local party committees to spend nonfederal funds to pay for all or part of certain activities; and
- Raising the individual contribution limits to candidates and party committees, as well as raising the limit on the total amount that an individual can contribute to influence federal elections over a two-year period.

Disclosure reports filed with the FEC during the non-election years of 2003 and 2005 have begun to show the effects of these new provisions, both on political committees’ fundraising activities and on the ways in which political committees, individuals and other groups chose to spend their funds.

Party Committees

Fundraising

Democratic and Republican party committees raised approximately \$421.0 million and spent approximately \$324.5 million during the non-election year of 2005. Republican national, state and local committees who report to the Commission raised \$248.6 million in federal funds, or “hard money,” during 2005. Democratic committees raised \$172.4 million. Democratic party committees reported significant increases in fundraising during 2005, while receipts of their Republican counterparts declined slightly overall when compared with 2003. Federal fundraising by parties has often been stable or even declined slightly in cycles without a Presidential campaign. While Democrats closed the relative gap in fundraising with their Republican counterparts, Republican party committees still raised nearly \$77 million more than Democrats in 2005.

Overall, Democratic committees at the federal, state and local levels reported raising nearly 41

Table 6-1

Overall Financial Activity of National Party Committees

In Millions of Dollars

	2001			2003		2005
	Federal	Nonfederal	Total	Federal Only		Federal Only
DNC	\$28.46	29.77	58.23	43.75		56.05
DSCC	\$14.55	20.73	35.27	22.8		43.61
DCCC	\$16.68	18.13	34.81	28.62		42.93
RNC	\$67.28	48.15	115.43	107.82		105.38
NRSC	\$25.02	23.80	48.82	26.40		35.52
NRCC	\$41.64	28.16	69.80	72.64		65.03

percent more in federally permissible “hard” money during 2005 than they raised in 2003. Each of the three national Democratic committees (Democratic National Committee (DNC), Democratic Senatorial Campaign Committee (DSCC) and Democratic Congressional Campaign Committee (DCCC)) reported substantial fundraising gains, and total federal fundraising by state and local Democratic committees also increased. Refer to Table 6-1 on the previous page for the overall financial activity of the national party committees in 2001, 2003 and 2005.

The strongest growth came from the DSCC whose \$43.6 million in 2005 receipts represented a 91 percent increase over 2003 levels. This total was also about \$8 million more than the National Republican Senatorial Committee (NRSC) raised, the first time any Democratic national committee has exceeded the fundraising of its Republican counterpart in a non-election year since the FEC began providing summaries in 1985.

Republican committees' fundraising in 2005 was down four percent from 2003 levels. While being

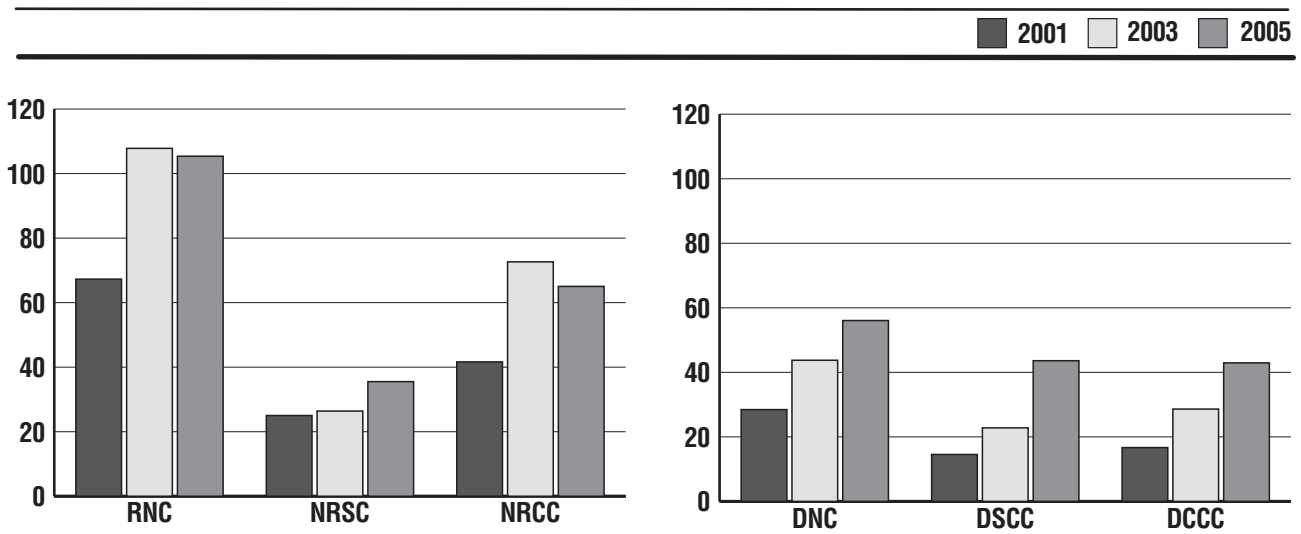
surpassed by the DSCC, the NRSC was the only national Republican committee to show a fundraising increase in 2005, up 34 percent from 2003 to \$35.5 million. The Republican National Committee (RNC), National Republican Congressional Committee (NRCC) and state and local Republican committees reported lower fundraising totals than in the last non-election year.

All of the national committees have raised significantly more in hard money in 2005 than they raised in 2001, the last year in which national parties were permitted to also raise so-called soft money. One major objective of the BCRA was to eliminate “soft money” fundraising and spending by national party committees. The new rules in which national parties were prohibited from receiving nonfederal funds took effect in 2002. Chart 6-1 illustrates the impact the nonfederal ban has had on the overall financial activity of national committees in 2005, compared with the two prior non-election years.

Individuals continued to be the major source of contributions for the national party committees in

Chart 6-1

**Total Fundraising by National Party Committees, Non-Election Years
In Millions of Dollars**



2005. Republican committees reported receiving \$222.3 million from individuals (89 percent of their receipts) while Democrats received \$130.6 million (76 percent of their total). Under the BCRA, unlimited nonfederal contributions were banned at the same time that the limit for federally permissible contributions from individuals to national party committees increased from \$20,000 to \$25,000 adjusted for inflation (which became \$26,700 in 2005). Thus, while in past non-election years national party committees often received very large donations from individuals, corporations, labor unions, etc. into their nonfederal accounts, during 2003 and 2005 the national parties could only receive up to \$25,000 and \$26,700, respectively, from any individual.

Under these new regulations, individual hard money contributions at the federal maximum gained significantly for the DNC and the RNC in 2003 and 2005, as illustrated by Chart 6-2. In 2001, before the limits increased, the DNC received nearly three percent of their total contributions from individuals giving between \$10,001 and \$20,000. In 2003, approximately 11 percent of the DNC's contributions were from individuals giving over \$20,000. In 2005 the percentage dropped to nearly seven percent. See Chart 6-3 on the following page for details. In contrast, the RNC's percentage of contributions from individuals giving over \$20,000 increased from 15 percent in 2003 to approximately 17 percent in 2005. Before the increased limits, the RNC only received seven percent of their total contributions from individuals giving \$10,001 to \$20,000. Chart 6-4, on the following page, details these results.

Smaller contributions from individuals also played a significant role in national party committee fundraising. Party committees must itemize contributions once they exceed \$200 in the aggregate from any individual during a calendar year. The majority of individuals who contribute to national party committees give less than \$200. The total amount of money received in small unitemized individual contributions is consistently the largest source of contributions for both party committees. However, since the passage of the BCRA, the overall percentage of unitemized contributions has decreased in response to more individuals contributing hard money at the federal maximum. In the past three non-election years, the DNC has raised a greater percentage of its unitemized contributions from individuals than the RNC. In 2005, 71 percent of the DNC's and 61 percent of the RNC's contributions from individuals were less than \$200. See Chart 6-3 and Chart 6-4 on the following page for details.

Chart 6-2
Total Individual Contributions to Parties,
Non-Election Years
In Millions of Dollars

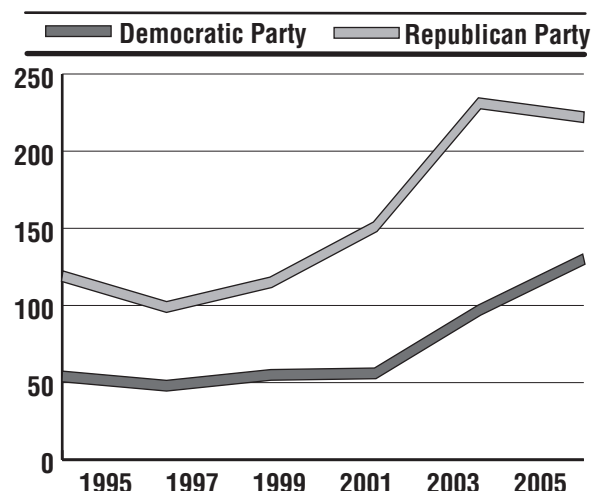


Chart 6-3
Ratio of Hard Money Contributions by Amount to DNC, Non-Election Years

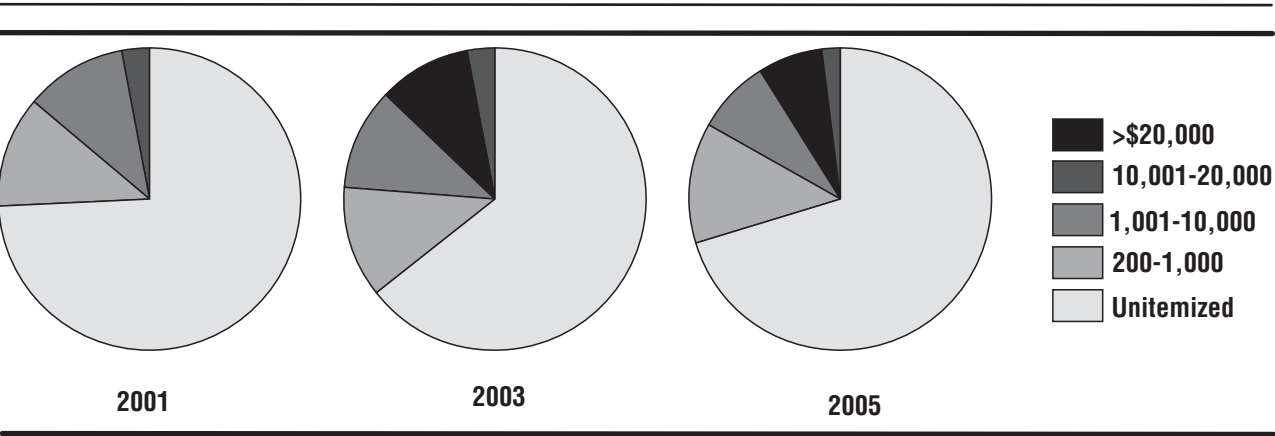
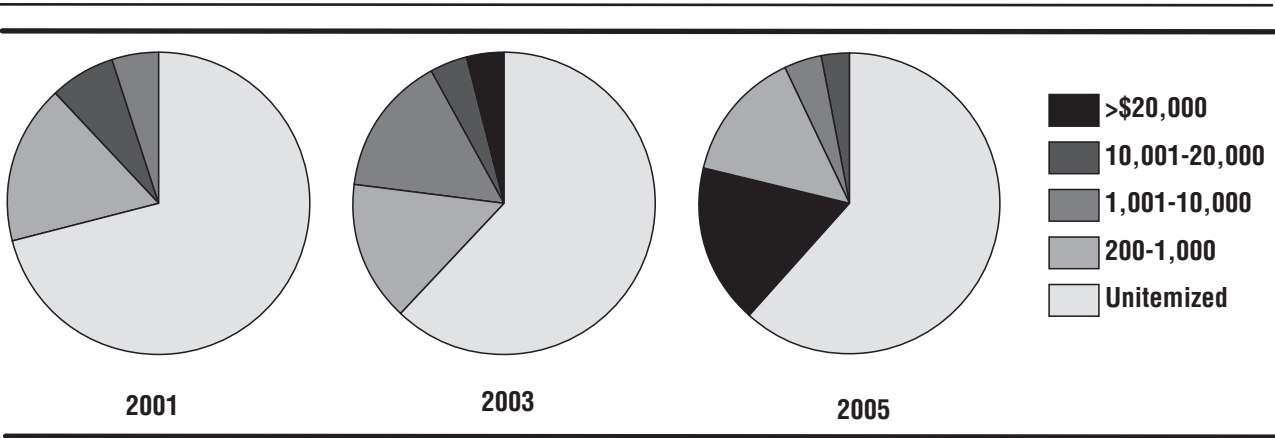


Chart 6-4
Ratio of Hard Money Contributions by Amount to RNC, Non-Election Years



Spending

In past years, national party committees generally supported their federal candidates indirectly through the state parties. Since the passage of the BCRA, national parties have spent much greater sums on the direct support of their candidates. Table 6-2 summarizes contributions to federal candidates made by each national party committee and by the state and local party committees of the two major parties during 2005. Overall the Democratic and Republican party committees contributed comparable sums to their candidates.

Table 6-2 also includes coordinated party expenditures made during the 2005 non-election year. Coordinated expenditures are expenditures that party committees may make in connection with general elections under special limits that are adjusted for inflation and account for each state's voting age population. The coordinated party expenditures differ from direct contributions in that the party committees must spend the funds on behalf of their nominees, rather than giving the money directly to the campaigns. A committee may assign any portion of its coordinated party expenditures to another committee—for example, a state party committee may assign all or some of its spending limit to a local party committee. The coordinated party expenditure limits for the 2005-2006 election cycle are:

- \$39,600 for House nominees (\$79,200 for nominees in states that have only one U.S. House Representative) and
- A range from \$79,200 to \$2,093,800 for Senate nominees, depending on each state's voting age population.

Party committees' coordinated party expenditures will increase during 2006, especially as the general election draws near.

Party committees also support candidates by making independent expenditures. Independent expenditures are public communications expressly advocating the election or defeat of clearly identified candidates. These expenditures are not subject to limits so long as there is no coordination with the campaign. Although 2005 was a non-election year, Table 6-2 shows that party committees did make some independent expenditures. It is likely that these independent expenditures were in connection with special elections held during 2005. Like coordinated expenditures, independent expenditures by party committees will increase dramatically during the election year.

Table 6-2
Party Committees' Support of
Federal Candidates, 2005

	Contributions	Independent Expenditures	Coordinated Party Expenditures
DNC	\$5,000	\$0	\$361,557
DSCC	223,800	0	486,391
DCCC	83,088	397,864	78,027
Democratic State/Local	213,677	1,545	44,316
RNC	45,200	8,860	172,009
NRSC	131,600	0	11,935
NRCC	134,695	707,224	88,667
Republican State/Local	136,560	98,597	52,632

Nonfederal Spending by State, District and Local Party Committees for Allocated Activities

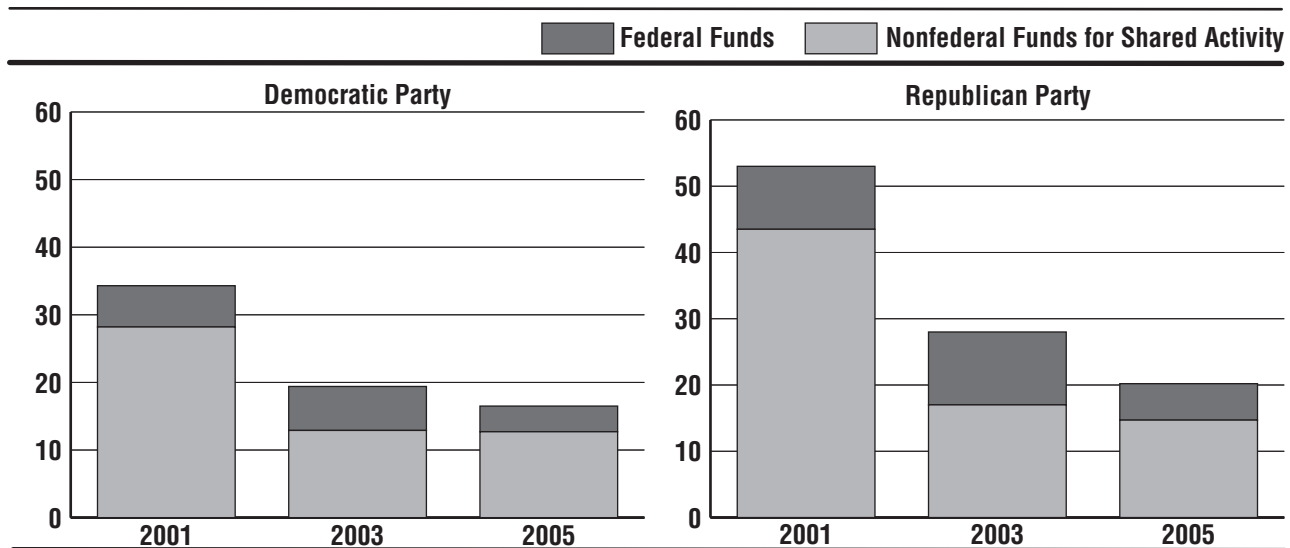
State and local committees of the two major parties spent less money on allocable activity in 2005 than they did in 2003. The total spending was significantly less in 2003 and 2005 than it was in 2001. This was due to the fact that the BCRA imposed stricter requirements on the use of soft money for some federal election activities undertaken by state parties. This change, combined with the fact that national committees were no longer raising soft money and transferring it to state committees, led to a substantial reduction in federally reported spending by these state and local parties. Total reported spending (which includes all hard money and any soft money used for allocable activity) by state and local committees declined by approximately one-

half when compared with 2001. This is evinced by Chart 6-5, which compares the total federal and nonfederal spending reported by all Democratic state and local party committees and all Republican state and local party committees. The chart also shows that the hard money disbursements remained fairly constant, while the nonfederal disbursements decreased substantially.

Levin Funds

The BCRA allowed state, district and local parties to compensate for some portion of the increased restriction on nonfederal spending by allowing them to raise and spend funds in limited amounts beyond the typical federal contribution limits and prohibitions. These “Levin” funds (referring to the sponsor of the statutory provision)

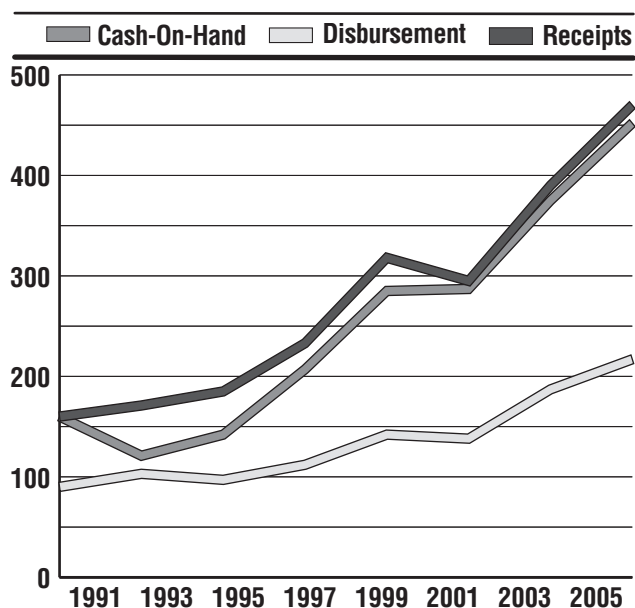
Chart 6-5
Total Disbursements of Federal Funds and Nonfederal Funds for
Shared Activities by State Party Committees, Non-Election Years
 In Millions of Dollars



are funds donated to state, district and local party committees, in accordance with state law, potentially from corporations, labor organizations and other individuals and persons in amounts not to exceed \$10,000 per calendar year.

A state or local party committee may allocate the expenses associated with certain "federal election activities" between federal funds and Levin funds. Levin funds did not represent a significant portion of party financial activity in 2003 or 2005. State Democratic party committees did not spend any Levin funds in 2003, but did spend \$2,725 in 2005. Republican state parties spent \$13,957 in 2003 and spent nearly five times more in 2005 with nearly \$70,000 in Levin fund expenditures.

Chart 6-6
Congressional Campaign Fundraising,
Non-Election Years
In Millions of Dollars



Congressional Committees

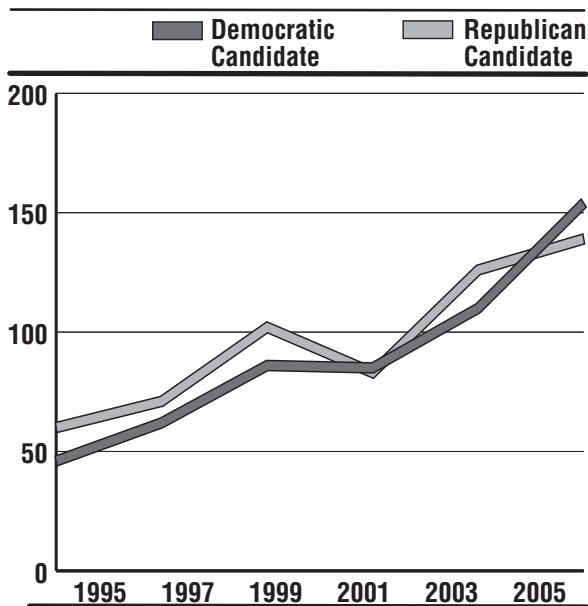
Democratic and Republican Congressional campaign fundraising totaled \$470.3 million in 2005, an increase of 21 percent when compared to 2003. Candidates for the U.S. House of Representatives raised \$280.1 million during 2005, an increase of 25 percent from 2003 levels. These campaigns spent \$147.4 million, 22 percent more than 2003. They entered the election year with cash-on-hand of \$282.7 million, up from the \$221.4 million balance reported at the end of 2003.

House fundraising increases in 2005 were most pronounced for Democratic candidates, who raised \$122 million, up 35 percent from 2003. Republican House candidates raised \$157.1 million in 2005, 18 percent more than in the previous off-year. Senate candidates raised a total of \$190.2 million in 2005, up 14 percent from 2003 levels. During 2005, Senate candidates reported disbursements of \$69.8 million, up slightly from what was spent during the off year of the previous cycle, and they ended 2005 with a cash balance of \$169 million. Chart 6-6 shows the increased receipts and cash-on-hand for House and Senate campaigns since 2001. The total amount of disbursements in non-election years has not increased at the same rate as that of receipts and cash-on-hand amounts.

Comparing Senate races between election cycles is problematic, however, because different states hold Senate elections each cycle. There were a number of competitive races in states with large populations in 2004, so Senate activity was relatively high in 2003. Individual Senate campaigns can also be unusually large and effect overall totals, particularly early in the campaign year. In 2005, for example, Hillary Clinton of New York raised \$21.4 million, more than twice the total raised by the next largest campaign (Rick Santorum of Pennsylvania at \$10.2 million).

Contributions from PACs and other candidate committees, whose limits were left largely unchanged under BCRA, rose 34 percent to \$135.6 million. This repre-

Chart 6-7
Total Individual Contributions to Congressional
Candidates, Non-Election Years
In Millions of Dollars



sent 29 percent of campaigns' receipts, up from 26 percent in 2003, but still less than 31 percent in 2001. Funds from candidates themselves totaled \$24.1 million or five percent of all fundraising.

Contributions from individuals remain the largest source of funds for Congressional candidates. The \$296.7 million raised from individuals was 25 percent more than in 2003 and represented 63 percent of all fundraising during the year, up from 61 percent in 2003. The BCRA increased contribution limits from \$1,000 per election to \$2,000 and indexed them for inflation. The limit in 2006 campaigns is \$2,100 per election (or a total of \$4,200 for a primary and general election). Chart 6-7 shows the overall increases in individual contributions to Democratic and Republican candidates since 2001.

Candidate committees have benefited from the increased contribution limits. In 2003, 23 percent of individual contributions exceeded the previous limit of \$1,000. The increased limit allowed for candidate committees to augment their fundraising significantly. During 2001 candidate committees raised approximately \$150 million, and in 2003 that number more than tripled with contributions from individuals exceeding \$400 million. Fifty-two percent of the total contributions for 2003 were over \$1,000. During 2005 candidate committees raised approximately \$250 million from individual contributions. Twenty percent of the donors gave contributions over \$1,000 which resulted in 48 percent of total contributions coming from the increased limit. Table 6-3 details individual contributions at the increased limits.

Table 6-3
Individual Contributions to House, Senate and Presidential Committees

	2001	2003	2005
Number of Contributions	248,091	471,633	318,272
Total Amount of Contributions	\$158,433,819	\$419,679,073	\$270,220,807
Number of Contributions over \$1,000	n/a	108,131	64,843
Total Amount of Contributions over \$1,000	n/a	\$218,139,368	\$130,624,580
Percentage of Number of Contributions over \$1,000	n/a	23%	20%
Percentage of Total Amount of Contributions over \$1,000	n/a	52%	48%

Chart 6-8
Number of PACs in Non-Election Years

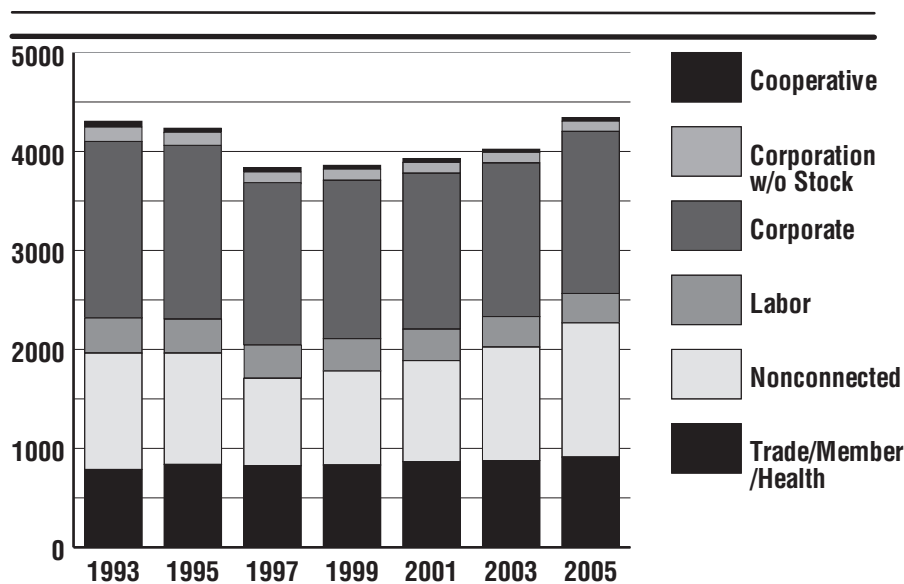
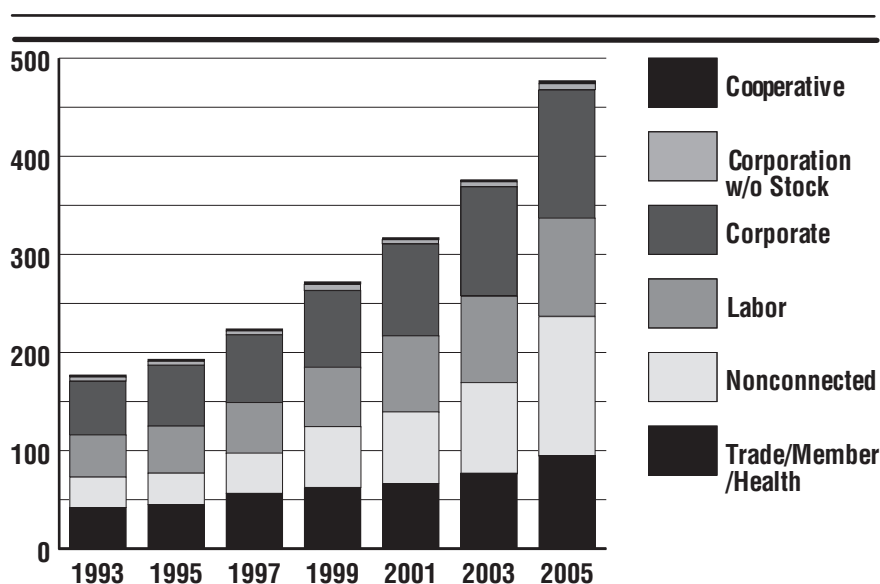


Chart 6-9
PAC Receipts in Non-Election Years
In Millions of Dollars



Political Action Committees

Federal political action committees (PACs) ended 2005 with record percentage gains in receipts, disbursements and contributions when compared to the last non-election year. They raised \$477.4 million dollars this year—27 percent more than in 2003—and spent \$394.1 million—37 percent more than in 2003. Chart 6-8 tracks the increasing PAC receipts for the non-election years since 1993. PAC contributions totaled \$140.5 million, up 33 percent from the last non-election year. They also had 23 percent more cash-on-hand and 12 percent less outstanding debt.

While all categories of PACs increased their financial activity in 2005, the most substantial growth came from nonconnected committees (i.e. PACs not supported by particular corporations, labor organizations, trade or membership groups, etc.) who raised 52 percent more than they had in 2003, spent 65 percent more and contributed 60 percent more to candidates than in 2003.

The total number of PACs also increased by 320, from 4,023 in 2003 to 4,340 in 2005. Roughly two-thirds of the new committees were nonconnected PACs. Chart 6-9 exhibits the increase in the number of PACs from 1997 to 2005. Overall increases in

contributions ranged from 20 percent for PAC contributions to Senate Democrats (to a total of \$15.2 million) to a 45 percent increase for House Republican candidates for a 2005 total of 62.2 million. While contributions to both Democrats and Republicans in both chambers were higher in 2005, growth rates were generally greater for Republican candidates in both the Senate and House of Representatives. Chart 6-10, on the following page, demonstrates that contributions from corporate PACs to Republican candidates grew the most in 2005 with an increase of \$11 million from 2003. Nonconnected PACs and trade and membership PACs were the next biggest contributors to Republican candidates with increases of approximately \$6.5 million from the last non-election year. Chart 6-11 shows the more moderate increases of PAC contributions to Democratic candidates. The 2005 non-election year was the first since 1993 in which Democratic candidates received more contributions from corporate PACs than from labor PACs.

Chart 6-10
PAC Contributions to Republican Candidates
In Hundreds of Thousands of Dollars

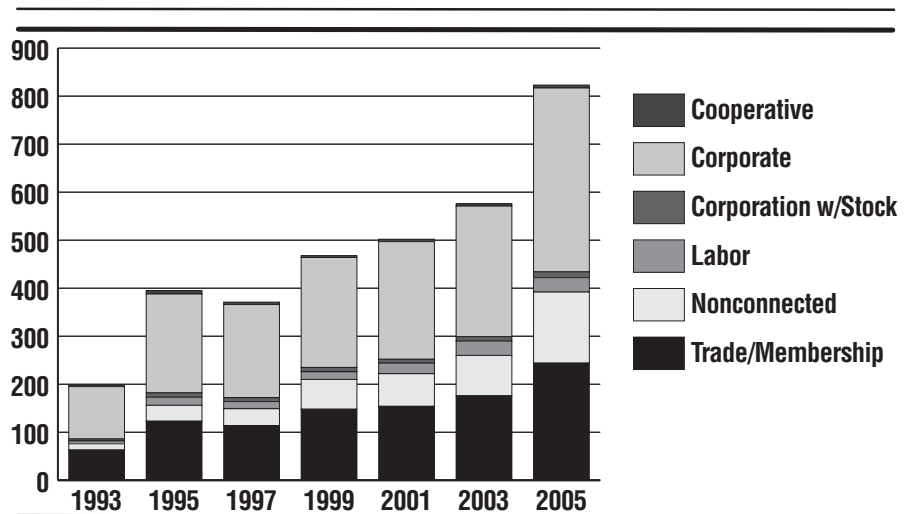
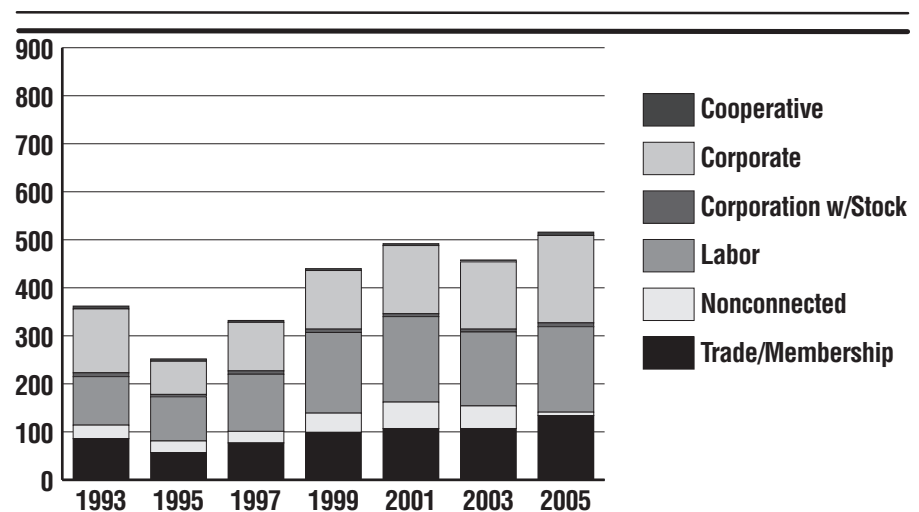


Chart 6-11
PAC Contributions to Democratic Candidates
In Hundreds of Thousands of Dollars



Appendix 1

Biographies of Commissioners and Officers

Commissioners¹

Scott E. Thomas, Chairman April 30, 2003

Scott Thomas was appointed to the Commission in 1986 and reappointed in 1991 and 1998. He previously served as Chairman in 1987, 1993 and 1999. Prior to serving as a Commissioner, Mr. Thomas was the executive assistant to former Commissioner Thomas E. Harris. He originally joined the FEC as a legal intern in 1975. He worked as a staff attorney in the Office of General Counsel and later became an Assistant General Counsel for Enforcement.

A Wyoming native, Mr. Thomas graduated from Stanford University and holds a J.D. from Georgetown University Law Center. He is a member of the District of Columbia and U.S. Supreme Court bars.

Michael E. Toner, Vice-Chairman April 30, 2007

Michael E. Toner was nominated to the Commission by President George W. Bush on March 4, 2002, and appointed on March 29, 2002. Mr. Toner was confirmed by the U.S. Senate on March 18, 2003.

Prior to being appointed to the FEC, Mr. Toner served as Chief Counsel of the Republican National Committee (RNC). Mr. Toner joined the RNC in 2001 after serving as General Counsel of the Bush-Cheney Transition Team in Washington, D.C., and General Counsel of the Bush-Cheney 2000 Presidential Campaign in Austin, TX.

Before joining the Bush campaign in Austin, Commissioner Toner was Deputy Counsel at the RNC from 1997-1999. Prior to his tenure at the RNC, Mr. Toner served as counsel to the Dole/Kemp Presidential Campaign in 1996.

Mr. Toner was an associate attorney at Wiley, Rein, & Fielding in Washington, D.C., from 1992-1996. His

work there included advising political committees and corporate clients on federal and state election law compliance. He was also involved in a number of First and Fourteenth Amendment appellate litigation matters, including two cases that were successful in the U.S. Supreme Court.

Mr. Toner has written widely on campaign finance matters, including in the *Washington Post*, *Boston Globe*, *Chicago Tribune* and *Washington Times*. Mr. Toner is a lecturer in the Department of Politics at the University of Virginia.

Mr. Toner received a J.D. *cum laude* from Cornell Law School in 1992, an M.A. in Political Science from Johns Hopkins University in 1989 and a B.A. with distinction from the University of Virginia in 1986. He is a member of the District of Columbia and Virginia bars as well as the U.S. Supreme Court bar, the Fourth U.S. Circuit Court of Appeals and the U.S. District Courts for the District of Columbia and the Eastern District of Virginia.

David M. Mason, Commissioner April 30, 2009

David Mason was appointed to the Commission by President Bill Clinton in 1998. Commissioner Mason served as Chairman of the FEC in 2002. Prior to his appointment, Mr. Mason served as Senior Fellow, Congressional Studies at the Heritage Foundation. He joined Heritage in 1990 as Director of Executive Branch Liaison. In 1995, he became Vice President, Government Relations, and in 1997, Mr. Mason was designated Senior Fellow with a focus on research, writing and commentary on Congress and national politics.

Prior to his work at the Heritage Foundation, Commissioner Mason served as Deputy Assistant Secretary of Defense and served on the Staffs of Senator John Warner, Representative Tom Bliley and then House Minority Whip Trent Lott. Throughout his career, he worked on numerous Congressional, Senate, Gubernatorial and Presidential campaigns. Additionally, Mr. Mason was a nominee for the Virginia House of Delegates in the 48th District in 1982.

Commissioner Mason attended Lynchburg College in Virginia and graduated *cum laude* from Claremont McKenna College in California. He is active in po-

¹ On December 16, 2005, President George W. Bush nominated three new Commissioners to the FEC. The nominees include Steven T. Walther, Robert D. Lenhard and Hans A. von Spakovsky. Commissioner David Mason was nominated to serve a second term. The Commissioners were appointed by President Bush on January 4, 2006.

litical and community affairs at both the local and national levels. He and his wife reside in Lovettsville, Virginia, with their ten children.

Ellen L. Weintraub, Commissioner
April 30, 2007

Ellen Weintraub was appointed to the Federal Election Commission on December 6, 2002, and took office on December 9, 2002. She served as Chair of the Commission for the year 2003. Ms. Weintraub is the third woman to serve on the Commission.

Prior to her appointment, Ms. Weintraub was Of Counsel to Perkins Coie, LLP, and a member of its Political Law Group. There, she counseled clients on federal and state campaign finance laws, political ethics, nonprofit law, and lobbying regulation. During the election contest arising out of the 1996 election of Senator Mary Landrieu (D-LA), Ms. Weintraub served on the legal team that advised the Senate Rules Committee. Her tenure with Perkins Coie represented Ms. Weintraub's second stint in private practice, having previously practiced as a litigator with the New York firm of Cahill Gordon & Reindel.

Before joining Perkins Coie, Ms. Weintraub was Counsel to the Committee on Standards of Official Conduct for the U.S. House of Representatives (the House Ethics Committee). Like the Commission, the Committee on Standards is a bipartisan body, evenly divided between Democratic and Republican members. There, Ms. Weintraub focused on implementing the Ethics Reform Act of 1989 and subsequent changes to the House Code of Official Conduct. She also served as editor in chief of the House Ethics Manual and as a principal contributor to the Senate Ethics Manual.

Ms. Weintraub received her B.A. *cum laude* from Yale College and her J.D. from Harvard Law School. A native New Yorker, she is a member of the New York and District of Columbia bars and the Supreme Court bar. She currently resides in Maryland with her husband, Bill Dauster, and their three children.

Danny L. McDonald, Commissioner
April 30, 2005

Danny McDonald was first appointed to the Commission in 1981 and was reappointed in 1987, 1994 and 2000. He served as the FEC Chairman in 1983, 1989, 1995 and 2001. Before his original appointment, Mr. McDonald managed 10 regulatory divisions as the general administrator of the Oklahoma Corporation Commission. He previously served as secretary of the Tulsa County Election Board and as the chief clerk of the board. He was also a member of the Advisory Panel to the FEC's Clearinghouse on Election Administration.

A native of Sand Springs, Oklahoma, Commissioner McDonald graduated from the Oklahoma State University and attended the John F. Kennedy School of Government at Harvard University.

Bradley A. Smith
April 30, 2005

Bradley Smith was nominated to the Commission by President Clinton on February 9, 2000, and confirmed by the U.S. Senate on May 24, 2000. Commissioner Smith resigned from the Commission on August 21, 2005. Prior to his appointment, Commissioner Smith was Professor of Law at Capital University Law School in Columbus, Ohio. His areas of specialty were Election Law, Comparative Election Law, Jurisprudence, Law & Economics and Civil Procedure. Mr. Smith returned to the faculty of Capital after he resigned from the FEC.

Prior to joining the faculty at Capital in 1993, Mr. Smith had practiced with the Columbus law firm of Vorys, Sater, Seymour & Pease. Throughout his career, he has also served as the United States Vice Consul in Guayaquil, Ecuador, worked as a consultant in the health care field and served as General Manager of the Small Business Association of Michigan. During his tenure at the Small Business Association, Mr. Smith's responsibilities included management of the organization's political action committee.

Commissioner Smith received his B.A. *cum laude* from Kalamazoo College in Kalamazoo, Michigan, and his J.D. from Harvard Law School.

Statutory Officers

James A. Pehrkon, Staff Director

James Pehrkon retired from his post as FEC Staff Director on December 15, 2005. Mr. Pehrkon became Staff Director on April 14, 1999, after serving as Acting Staff Director for eight months. Prior to that, Mr. Pehrkon served for 18 years as the Commission's Deputy Staff Director with responsibilities for managing the FEC's budget, administration and computer systems. Among the agency's first employees, Mr. Pehrkon is credited with setting up the FEC's Data Systems Development Division. He directed the data division before assuming his duties as Deputy Staff Director.

An Austin, Texas, native, Mr. Pehrkon received an undergraduate degree from Harvard University and did graduate work in foreign affairs at Georgetown University.

Lawrence H. Norton, General Counsel

Lawrence Norton became General Counsel of the FEC on September 17, 2001. Prior to joining the Commission, Mr. Norton served as an Associate Director at the Commodity Futures Trading Commission for five years. He also worked as an Assistant Attorney General in the Maryland Attorney General's office.

Mr. Norton graduated Order of the Coif from the University of Maryland School of Law.

Lynne A. McFarland, Inspector General

Lynne McFarland became the FEC's first permanent Inspector General in February 1990. She came to the Commission in 1976, first as a reports analyst. Later, she worked as a program analyst in the Office of Planning and Management.

A Maryland native, Ms. McFarland holds a sociology degree from the Frostburg State College and is a member of the Institute of Internal Auditors.

Appendix 2

2005 Chronology of Events

January

- 1 – Chairman Scott E. Thomas and Vice-Chairman Michael E. Toner begin their one-year terms of office.
- 12 – EMILY's List files a complaint in the U.S. District Court for the District of Columbia challenging the Commission's new regulations regarding certain solicitations and allocation ratios for PACs.
- 19 – Commission conducts joint FEC-IRS workshop for PACs and other 527 organizations.
- 23 – Commission conducts reporting roundtables for candidates, PACs and party committees.
- 25 – FEC issues semi-annual PAC count.
- 27 – Commission approves final rules regarding contributions and donations by minors to candidates and political party committees.
- 27 – Commission approves NPRM seeking comments on proposed revisions to the definitions of "agent."
- 27 – Commission approves NPRM seeking comments on proposed changes to its regulations on the disbursement of Levin funds by state, district and local party committees.
- 27 – Commission certifies \$20,023.37 in federal matching funds to two Presidential candidates for the 2004 election.
- 31 – 2004 year-end reports due.

February

- 14 – Commission approves NPRM seeking comments on proposed changes to its rule governing appearances by federal candidates and officeholders at state, district and local party fundraisers.
- 17 – U.S. District Court for the District of Columbia in *Judicial Watch, Inc. v. FEC* grants the FEC's motion for summary judgment finding that the FEC's decision to dismiss an administrative complaint was supported by substantial evidence and thus not contrary to law.
- 20 – Monthly reports due.

- 24 – Commission certifies \$5,142.50 in federal matching funds to one Presidential candidate for the 2004 election.
- 25 – U.S. District Court for the District of Columbia in *EMILY's List v. FEC* denies the plaintiff's request for a preliminary injunction.
- 28 – U.S. District Court for the District of Columbia in *Alliance for Democracy v. FEC*, grants the Commission's motion to dismiss this case, finding that the plaintiffs lack standing.

March

- 10 – Commission approves final rules on filing by Priority Mail, Express Mail and Overnight Delivery service.
- 10 – Commission approves final rules on political party committee donations to certain tax-exempt organizations and political organizations.
- 15-17 – Commission holds conference in Washington, D.C., for candidates and party committees.
- 20 – Monthly reports due.
- 23 – Commission conducts roundtable on Treasurers' Responsibilities.
- 24 – Commission approves NPRM seeking comments on proposed rules to include paid Internet ads in the definition of public communication.
- 25 – Commission sends annual legislative recommendations to the President and Congress.
- 29 – Commission certifies \$53,237 in federal matching fund payments to two Presidential candidates in the 2004 primaries. This is the final matching payment for Presidential candidates in the 2004 primaries.

April

- 6 – Commission conducts reporting roundtable for candidate committees.
- 12 – Commission submits FY2006 budget request to Congress.

- 13 – U.S. Court of Appeals for the District of Columbia Circuit in *Jim Sykes v. FEC et al.* grants the Commission's motion for summary affirmation.
- 15 – Quarterly reports due.
- 20 – Monthly reports due.
- 25-27 – Commission holds conference in Washington, D.C., for corporations and their PACs.
- 26 – U.S. District Court for the Western District of Tennessee in *Augusti and Augusti for Congress v. FEC* grants in part the Commission's motion to dismiss.
- 28 – Commission approves NPRM concerning the definition of federal election activity.
- 28 – Commission approves NPRM proposing changes to its regulations regarding state, district and local party committee payment of certain salaries and wages.
- 29 – U.S. District Court for the District of New Mexico in *FEC v. Democratic Party of New Mexico* finds the party violated the Act by using a nonfederal account to make public communications in connection with a federal election, making excessive contributions and failing to report certain coordinated expenditures.

May

- 9 – U.S. District Court of the District of Columbia in *Wisconsin Right to Life v. FEC* dismisses, with prejudice, as applied challenge to electioneering communications rules.
- 16 – U.S. District Court for the District of Columbia in *Citizens for Responsibility and Ethics in Washington v. FEC* grants the FEC's motion for summary judgment.
- 17 – Commission holds a public hearing regarding the proposed rules on federal candidate and officeholder solicitations at state, district and local party committee fundraisers; the definition of "agent"; and payroll deductions for contributions to a trade association's SSF.
- 20 – Monthly reports due.
- 23 – Wisconsin Right to Life appeals to the Supreme Court.

June

- 1-3 – Commission holds conference in Chicago, IL, for trade associations, membership organizations, labor organizations and their PACs.
- 9 – Commission adopts final rules that adjust civil penalties for inflation.
- 10 – U.S. Court of Appeals for the District of Columbia in *John Hagelin, et al. v. FEC* finds that the FEC's decision to dismiss an administrative complaint was supported by substantial evidence and thus not contrary to law.
- 15 – Quarterly reports due.
- 20 – Monthly reports due.
- 23 – Commission approves a revised Explanation and Justification for its rule regarding appearances by federal candidates and officeholders at state, district and local party fundraisers.
- 27 – U.S. District Court for the Central District of Illinois in *FEC v. Friends of Lane Evans, et al.* signs a consent judgment reflecting an agreement in the case between the Commission and friends of Lane Evans, the 17th District Victory Fund and the Rock Island Democratic Central Committee.
- 28-29 – Commission hosts a public hearing concerning proposed rules that would include some paid Internet ads within the definition of public communication.

July

- 5 – Commission approves the final audit report on the Democrat, Republican, Independent Voter Education Political Campaign Committee (DRIVE).
- 13 – Commission conducts reporting roundtables for candidates, PACs and party committees.
- 14 – Commission approves final rules on payroll deductions for contributions to a trade association's SSF.
- 15 – U.S. Court of Appeals for the District of Columbia in *Shays and Meehan v. FEC* upholds the appealed portion of the District

Court's September 18, 2004, decision invalidating several Commission regulations.

20 – Monthly reports due.

26 – Commission announces civil penalties totaling more than \$50,000 in the first two enforcement cases to arise from the "Millionaires' Amendment."

26-27 – Commission holds state outreach sessions in Savannah, GA.

31 – Mid-Year reports due.

August

4 – Commission holds a public hearing on proposed rules regarding the definition of federal election activity and state, district and local party committee payments of certain salaries and wages.

8 – Montana joins FEC's state filing waiver program.

10 – In *Augusti and Augusti for Congress v. FEC*, plaintiff voluntarily dismisses the complaint.

10-11 – Commission holds state outreach sessions in Denver, CO.

18 – Commission approves NPRM seeking comments on proposed changes to its rules defining electioneering communications.

20 – Monthly reports due.

22 – Commission extends comment period on proposed rules regarding federal election activity and party committee salary allocation.

23-24 – Commission holds state outreach sessions in Portland, OR.

29 – In *Shays and Meehan v. FEC*, Commission files with the U.S. Court of Appeals for the District of Columbia Circuit a petition for rehearing *en banc*.

30 – U.S. District Court for the Western District of Louisiana in *Cooksey v. FEC* grants the Commission's motion to dismiss this case.

September

14-15 – Commission holds conference in San Diego, CA, for campaigns, parties and corporate/labor/trade PACs.

19 – FEC asks the U.S. District Court for the District of Columbia to find that Club for Growth, Inc. violated the Act by failing to register with the Commission after meeting both the statutory definition of "political committee" and the "major purpose" test established by the Supreme Court.

20 – Monthly reports due.

22 – Commission approves NPRM on the definitions of "solicit" and "direct."

27 – Supreme Court agrees to hear Wisconsin Right to Life's as-applied challenge to the ban of corporate financing of electioneering communications.

October

15 – Quarterly reports due.

17 – Revised FEC Forms 5 and 10 become effective.

20 – Monthly reports due.

20 – Commission holds a public hearing on proposed rules regarding electioneering communications.

21 – U.S. Court of Appeals for the District of Columbia declines to rehear *en banc* the Commission's appeal of *Shays v. FEC*.

25-26 – Commission holds conference in San Antonio, TX, for campaigns, parties and corporate/labor/trade PACs.

27 – U.S. District Court for the District of Columbia in *Citizens for Responsibility and Ethics in Washington v. FEC* grants a joint motion to dismiss this case, which challenged the Commission's refusal to provide documents relating to an ongoing enforcement matter.

November

10 – Commission adopts final rules eliminating the *de minimis* exemption for Levin Fund disbursements by state, district and local party committees and organizations.

15 – U.S. District Court for the District of Columbia in *Citizens for Responsibility and Ethics in Washington (CREW) v. FEC* grants the FEC's motion for summary judgment finding

that CREW lacked standing to challenge the Commission's dismissal of its administrative complaint.

15 – Commission holds public hearing on proposed rules amending the definitions of “solicit” and “direct.”

16 – Commission conducts seminar for nonconnected PACs.

20 – Monthly reports due.

22 – U.S. District Court for the Northern District of Florida in *FEC v. Reform Party of the United States of America* orders defendant to repay the U.S. Treasury for impermissible Presidential nominating convention expenses.

30 – President Bush signs Transportation, Treasury, Housing and Urban Development, Judiciary, District of Columbia, and Independent Agencies Appropriations Act, 2006, extending the Administrative Fine Program through December 31, 2008.

30 – Michael G. Liffbrig asks the U.S. District Court of North Dakota to find that the FEC is no longer permitted to require him to file disclosure reports.

22 – U.S. Court of Appeals for the District of Columbia upholds the District Court's refusal to grant EMILY's List's request for preliminary injunctive relief in *EMILY's List v. FEC*.

December

1 – Commission adopts final rules on state, district and local party committee payments of certain salaries and wages.

8 – Commission approves NPRM seeking comments on proposed changes to its rules defining coordinated communications.

9 – Alfred C. Sharpton agrees to repay public funds he received in 2004 under the Presidential Primary Matching Payment Account Act.

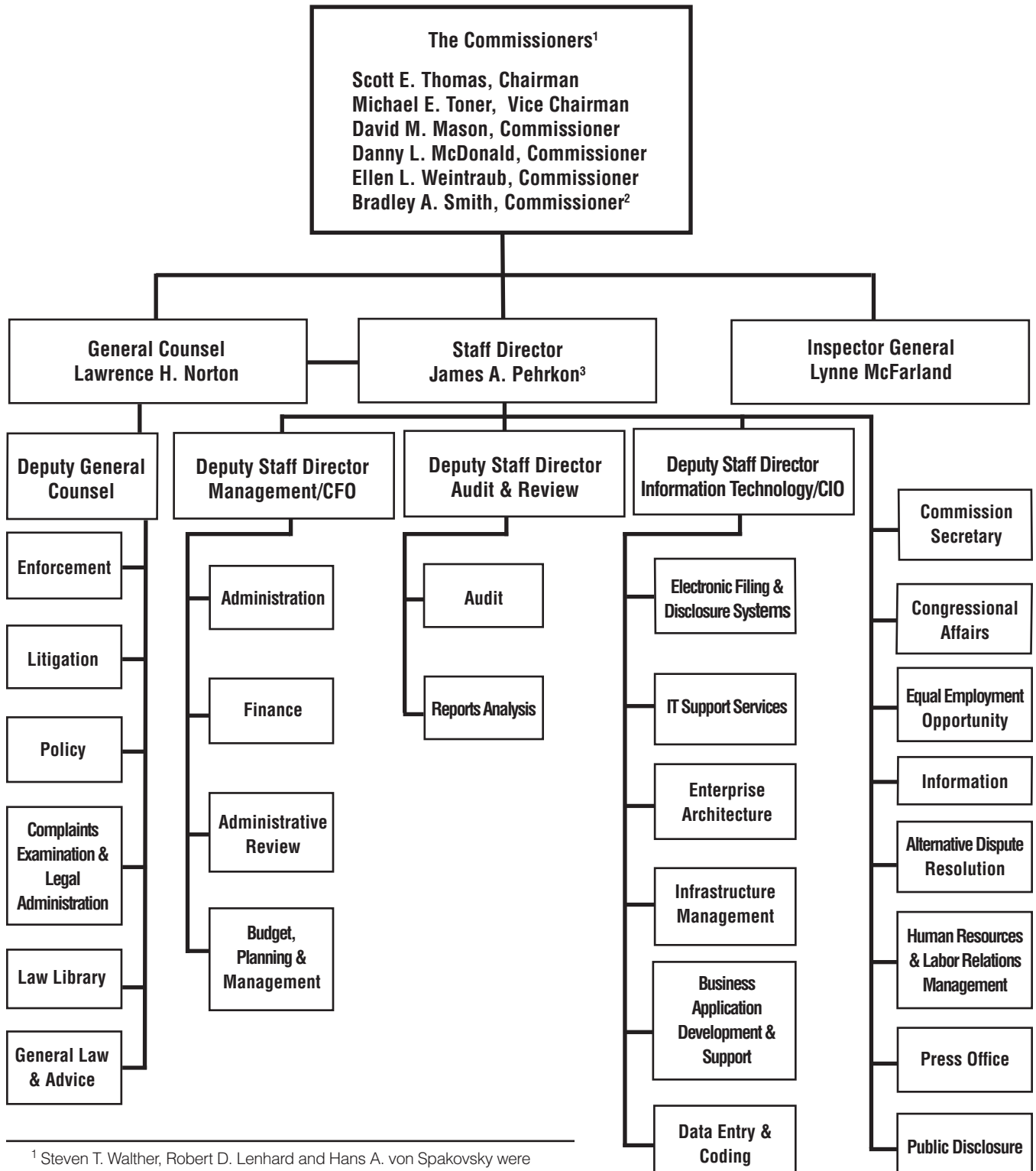
14 – Commission elects Michael E. Toner as its Chairman and Danny Lee McDonald as its Vice Chairman for 2006.

15 – Commission adopts final rules on electioneering communications.

15 – Commission adopts final rules extending the Administrative Fine Program through December 31, 2008.

20 – Monthly reports due.

Appendix 3 FEC Organizational Chart



¹ Steven T. Walther, Robert D. Lenhard and Hans A. von Spakovsky were appointed to the Commission on January 4, 2006 (See Appendix 1).

² Bradley A. Smith resigned from the Commission on August 21, 2005.

³ James A. Pehrkon retired from his post as Staff Director on December 15, 2005.

Appendix 4 FEC Offices

This appendix briefly describes the offices within the Commission, located at 999 E Street, NW, Washington, DC 20463. The offices are listed alphabetically, with local telephone numbers given for offices that provide services to the public. Commission offices can also be reached toll-free at 800/424-9530 and locally at 202/694-1100.

Administration

The Administration Division consists of a Finance Office and an Administration Office. The Finance Office administers the agency's accounting and payroll programs. The Administration Office is responsible for procurement, contracting, space management, records management, telecommunications, building security and maintenance. In addition, the office handles printing, document reproduction and mail services.

Audit

Many of the Audit Division's responsibilities concern the Presidential public funding program. The division evaluates the matching fund submissions of Presidential primary candidates and determines the amount of contributions that may be matched with federal funds. As required by law, the division audits all public funding recipients.

In addition, the division audits those committees that, according to FEC determinations, have not met the threshold requirements for substantial compliance with the law. Audit Division resources are also used in the Commission's investigations of complaints.

Commission Secretary

The Commission Secretary is responsible for all administrative matters relating to Commission meetings, as well as Commission votes taken outside of the meetings. This includes preparing meeting agendas, agenda documents, Sunshine Act notices, meeting minutes and vote certifications.

The Secretary also logs, circulates and tracks numerous materials not related to Commission meetings, and records the Commissioners' votes on these matters. All matters on which a vote is taken are entered into the Secretary's database.

Commissioners

The six Commissioners, no more than three of whom may represent the same political party, are appointed by the President and confirmed by the Senate.

The Commissioners serve full time and are responsible for administering and enforcing the Federal Election Campaign Act. They generally meet twice a week, once in closed session to discuss matters that, by law, must remain confidential, and once in a meeting open to the public. At these meetings, they formulate policy and vote on significant legal and administrative matters.

Congressional, Legislative and Intergovernmental Affairs

This office serves as primary liaison with Congress and Executive Branch agencies. The office is responsible for keeping Members of Congress informed about Commission decisions and, in turn, for keeping the agency up to date on legislative developments. Local phone: 202/694-1006; toll-free 800/424-9530.

Equal Employment Opportunity (EEO) and Special Programs

The EEO Office advises the Commission on the prevention of discriminatory practices and manages the agency's EEO Program.

The office is also responsible for developing a Special Emphasis Program tailored to the training and advancement needs of women, minorities, veterans, special populations and disabled employees. In addition, the EEO office recommends affirmative action recruitment, hiring and career advancement. The office encourages the informal resolution of complaints during the counseling stage.

Additionally, the office develops and manages a variety of agency-wide special projects. These include the Combined Federal Campaign, the U.S. Savings Bonds Drive and workshops intended to improve employees' personal and professional lives.

General Counsel

The Office of General Counsel (OGC) consists of five organizational units: (1) the Policy Division; (2) the Enforcement Division; (3) the Litigation Division; (4) the General Law and Advice Division; and (5) the Office of Complaints Examination and Legal Administration.

Policy Division—The Policy Division drafts, for Commission consideration, advisory opinions and regulations as well as other legal memoranda interpreting the federal campaign finance law. In addition, the Policy Division provides legal advice in response to legislative inquiries, legal reviews for all Commission publications and training and advice to Commission staff concerning changes in the law.

Enforcement Division—The Enforcement Division investigates alleged violations of the law, negotiates conciliation agreements and recommends civil penalties for individuals and entities that have violated the Act.

Litigation Division—The Litigation Division handles all civil litigation arising out of any legal actions brought by or against the Commission. The Litigation Division is the exclusive representative of the Commission before the federal district and circuit courts, and the Supreme Court with respect to Title 26 matters.

General Law and Advice Division—The General Law and Advice Division is responsible for processing all audit and repayment matters, as well as handling debt settlements, administrative terminations and administrative fines matters. In addition, the division handles all administrative law, disclosure, FOIA, Privacy Act, employment and labor law matters, and it administers the Commission's Ethics in Government Act program.

Office of Complaints Examination and Legal Administration—The Office of Complaints Examination and Legal Administration provides central docketing

functions for OGC; provides administrative IT and information services for OGC; and tracks performance data for OGC.

Information

In an effort to promote voluntary compliance with the law, the Information Division provides technical assistance to candidates, committees and others involved in elections through the Internet, email, letters, phone conversations, publications and conferences. Responding to phone and written inquiries, members of the staff provide information on the statute, FEC regulations, advisory opinions and court cases. Staff also lead workshops on the law and produce guides, pamphlets and videos on how to comply with the law. Located on the second floor, the division is open to the public. Local phone: 202/694-1100; toll-free phone: 800/424-9530.

Information Technology

This division provides computer support for the entire Commission. Its responsibilities are divided into two general areas.

In the area of campaign finance disclosure, the IT Division enters information into the FEC database from all reports filed by political committees and other entities. The division is also responsible for the computer programs that sort and organize campaign finance data into indexes.

These indexes permit a detailed analysis of campaign finance activity and provide a tool for monitoring contribution limits. The division also publishes the Reports on Financial Activity series of periodic studies on campaign finance and generates statistics for other publications.

Among its duties related to internal operations, the division provides computer support for the agency's automation systems and for administrative functions such as management information, document tracking, personnel and payroll systems as well as the MUR prioritization system.

Local phone: 202/694-1250; toll-free phone: 800/424-9530.

Inspector General

The FEC's Inspector General (IG) has two major responsibilities: to conduct internal audits and investigations to detect fraud, waste and abuse within the agency and to improve the economy and effectiveness of agency operations. The IG is required to report its activities to Congress on a semiannual basis. These reports may include descriptions of any serious problems or deficiencies in agency operations as well as corrective steps taken by the agency.

Law Library

The Commission law library, a government document depository, is located on the eighth floor and is open to the public. The library contains a basic reference collection, which includes materials on campaign finance reform, election law and current political activity. Visitors to the law library may use its computers to access the Internet and FEC databases. FEC advisory opinions and computer indices of enforcement proceedings (MURs) may be searched in the law library or the Public Records Office. Local phone: 202/694-1600; toll-free 800/424-9530.

Office of Administrative Review

The Office of Administrative Review (OAR) was established in 2000 after statutory amendments permitted the Commission to impose civil money penalties for violations of certain reporting requirements. Under the program, if the Commission finds "reason to believe" (RTB) that a committee failed to file a required report or notice, or filed it late, it will notify the committee of its finding and the amount of the proposed civil money penalty. Within 40 days, the committee may challenge the RTB finding. OAR reviews these challenges and may recommend that the Commission uphold the RTB finding and civil money penalty, uphold the RTB finding but modify or waive the civil money penalty, determine that no violation occurred or terminate its proceedings, or uphold the RTB finding and waive the civil money penalty if the committee demonstrates extraordinary circumstances. OAR also serves as the Commission's liaison with

the U.S. Department of the Treasury on debt collection matters involving unpaid civil money penalties under this program.

Office of Alternative Dispute Resolution

The FEC established the Alternative Dispute Resolution (ADR) office to provide parties in enforcement actions with an alternative method for resolving complaints that have been filed against them or for addressing issues identified in the course of an FEC audit. The program is designed to promote compliance with the federal campaign finance law and Commission regulations, and to reduce the cost of processing complaints by encouraging settlements outside the agency's normal enforcement track.

Office of Budget, Planning and Management

This office develops the Commission's strategic plan and budget and, each fiscal year, prepares a management plan determining the allocation and use of resources throughout the agency. Planning and Management monitors adherence to the plan and provides monthly reports measuring the progress of each division in achieving the plan's objectives.

Office of Human Resources and Labor Relations

The Human Resources Office provides policy guidance and operational support to managers and staff in all areas of human resources management. The office plays a critical role in helping the Commission meet strategic performance goals by attracting, developing, and retaining a highly qualified, diverse workforce and providing results-driven approaches to position management and classification, pay administration and compensation, performance management and human resource development. The office also provides expert consultation regarding employee benefits and wellness and family-friendly programs that sustain and enhance the employer-employee relationship. Additionally, the office admin-

isters the Commission's labor-management relations program. Finally, the Human Resources Office processes all personnel actions and maintains all official personnel records for Commission employees.

Press Office

Staff in the Press Office are the Commission's official media spokespersons. In addition to publicizing Commission actions and releasing statistics on campaign finance, they respond to all questions from representatives of the print and broadcast media. Located on the first floor, the office also handles requests under the Freedom of Information Act. Local phone: 202/694-1220; toll-free 800/424-9530.

Public Disclosure

The Public Disclosure Division processes incoming campaign finance reports from federal political committees and makes the reports available to the public. Located on the first floor, the division's Public Records Office has a library with ample work space and knowledgeable staff to help researchers locate documents and computer data. The FEC encourages the public to review the many resources available, which include computer indexes, advisory opinions and closed MURs.

The division's Processing Office receives incoming reports and processes them into formats that can be easily retrieved. These formats include paper, microfilm and digital computer images that can be easily accessed from terminals in the Public Records Office and those of agency staff.

The Public Disclosure Division also manages Faxline, an automated faxing service for ordering FEC documents, forms and publications, available 24 hours a day, 7 days a week.

Local phone: 202/694-1120; toll-free phone: 800/424-9530; Faxline: 202/501-3413.

Reports Analysis

Campaign finance analysts assist committee officials in complying with reporting requirements and conduct detailed examinations of the campaign finance reports filed by political committees. If an error, omission or prohibited activity (e.g., an excessive contribution) is discovered in the course of reviewing a report, the analyst sends the committee a letter which requests that the committee either amend its reports or provide further information concerning a particular problem. By sending these letters (RFAs), the Commission seeks to ensure full disclosure and to encourage the committee's voluntary compliance with the law. Analysts also provide frequent telephone assistance to committee officials and encourage them to call the division with reporting questions or compliance problems. Local phone: 202/694-1130; toll-free phone 800/424-9530.

Staff Director and Deputy Staff Directors

The Staff Director is responsible for appointing staff, with Commission approval, and for implementing agency policy. The Staff Director monitors the administration of the agency by overseeing the Commission's public disclosure activities, audit program, outreach efforts and review of reports.

Three Deputy Staff Directors assist in this supervision, one in the areas of budget and administration, another in information technology and the third in the areas of audit and review.

Appendix 5 Statistics on Commission Operations

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Summary of Disclosure Files

	Total Filers Existing in 2005	Filers Terminated as of 12/31/05	Continuing Filers as of 12/31/05	Number of Reports and Statements in 2005	Gross Receipts in 2005 (dollars)	Gross Expenditures in 2005 (dollars)
Presidential Candidate Committees	216	85	131	363	13,247,617	28,852,466
Senate Candidate Committees	472	147	325	1596	240,160,412	112,958,629
House Candidate Committees	2,063	471	1,592	6,742	248,315,809	139,288,048
Federal Party Committees	428	96	386	3,995	112,100,066	30,304,913
Delegate Committees	1	1	0	0	0	0
Nonparty Committees						
Labor Committees	307	23	284	1,665	34,438,990	29,404,241
Corporate Committees	1,710	141	1,569	9,445	35,502,100	32,4696,876
Membership, Trade and Other Committees	2,687	348	993	10,377	108,456,008	96,225,926
Communication Cost Filers	344	0	344	13	0	107,668
Independent Expenditures by Persons Other Than Political Committees	487	22	465	30	44,802	68,947
Electioneering Communications	48	0	48	1	139,000	57,350

Divisional Statistics for Calendar Year 2005

	Total
Reports Analysis Division	
Paper Documents processed	13,383
Reports reviewed	52,082
Telephone assistance and meetings	6,963
Requests for additional information (RFAs)	9,623
Compliance matters referred to Office of General Counsel or Audit Division	140
Administrative Fine cases initiated	196
Information Technology¹	
Documents receiving Pass I coding	14,682
Documents receiving Pass III coding	43,327
Documents receiving Pass I entry	52,547
Documents receiving Pass III entry	21,575
Transactions receiving Pass III entry	
• In-house	790,895
• Contract	147,338
Public Disclosure Division	
Campaign finance material processed (total pages)	1,604,646
Cumulative total pages of documents available for review	30,469,535
Requests for campaign finance reports	3,886
Visitors	5,580
Total people served	22,383
Information telephone calls	12,917
Computer printouts provided	35,553
Faxline requests	161
Total income (transmitted to U.S. Treasury)	9,858
Contacts with state election offices	2,964
Notices of failure to file with state election offices	14

	Total
Administrative Division	
Contracting and procurement transactions	1,103
Publications prepared for print	23
Pages of photocopying	16,000,000
Information Division	
Telephone inquiries	11,064
E-mail Inquiries	1,374
Information letters	2
Distribution of FEC materials	3,751
Prior notices (sent to inform filers of reporting deadlines)	18,973
Other mailings	57
Visitors	527
Public appearances by Commissioners and staff	115
Roundtable workshops	5
Publications	35
Press Office	
News releases	142
Telephone inquiries from press	5,200
Visitors	220
Freedom of Information Act (FOIA) requests	47
Fees for materials requested under FOIA (transmitted to U.S. Treasury)	0

¹ Computer coding and entry of campaign finance information occur in two phases. In the first phase, Pass I, summary information is coded and entered into the computer within 48 hours of the Commission's receipt of the report. During the second phase, Pass III, itemized information is coded and entered.

	Total
Office of General Counsel	
Administrative Terminations	
Pending at beginning of 2005	0
Opened	572
Closed	483
Pending at end of 2005	90
Advisory opinions	
Requests pending at beginning of 2005	2
Requests received	20
Issued	20
Not issued	1
Pending at end of 2005	1
Compliance cases²	
Pending at beginning of 2005	258
Opened	128
Closed	95
Transferred to ADR	75
Pending at end of 2005	216
Ethics Guidance	
Pending at beginning of 2005	0
Opened	86
Closed	85
Pending at end of 2005	1
Financial Disclosure Reports	
Pending at beginning of 2005	3
Opened	84
Closed	83
Pending at end of 2005	4
Law Library	
Telephone Inquiries	643
Visitors	468
Legal Review Audits	
Pending at beginning of 2005	7
Opened	49
Closed	52
Pending at end of 2005	4

	Total
Legal Review FECA	
Pending at beginning of 2005	3
Opened	44
Closed	37
Pending at end of 2005	7
Legal Review Non-FECA	
Pending at beginning of 2005	14
Opened	210
Closed	203
Pending at end of 2005	21
Litigation	
Cases pending at beginning of 2005	48
Cases opened	6
Cases closed	12
Cases pending at end of 2005	42
Regulations	
Notices of Proposed Rulemaking	9
Final or Interim Final Rules with Explanation and Justification	10
Public Rulemaking Hearings	5
Notice of Availability	0
Reports Filed with Office of Government Ethics	
Pending at beginning of 2005	1
Opened	9
Closed	9
Pending at end of 2005	1
Special Projects	
Pending at beginning of 2005	9
Opened	31
Closed	31
Pending at end of 2005	9

² In annual reports previous to 1994, the category "compliance cases" included only Matters Under Review (MURs). As a result of the Enforcement Priority System (EPS), the category has been expanded to include internally-generated matters in which the Commission has not yet made reason-to-believe findings.

Status of Audits, 2005

	Pending at Beginning of Year	Opened	Closed	Pending at End of Year
Presidential	5	6	1	10
Presidential Joint Fundraising	0	0	0	0
Senate	0	6	0	6
House	3	18	5	16
Party (National)	0	0	0	0
Party (Other)	6	0	6	0
Nonparty (PACs)	8	1	6	3
Total	22	31	18	35

Audits Completed by Audit Division, 1975–2005

	Total
Presidential	131
Presidential Joint Fundraising	12
Senate	35
House	206
Party (National)	47
Party (Other)	175
Nonparty (PACs)	106
Total	712

Audit Reports Publicly Released

Year	Title 2 ³	Title 26 ⁴	Total
1976	3	1	4
1977	6	6	12
1978	98 ⁵	10	108
1979	75 ⁵	9	84
1985	48 ⁵	11	59
1981	27 ⁵	13	40
1982	19	1	20
1983	22	0	22
1984	15	2	17
1985	4	9	13
1986	10	4	14
1987	12	4	16
1988	8	0	8
1989	2	7	9
1990	1	6	7
1991	5	8	13
1992	9	3	12
1993	10	2	12
1994	5	17	22
1995	12	0	12
1996	23	0	23
1997	7	6	13
1998	5	7	12
1999	20	7	27
2000	14	0	14
2001	15	1	16
2002	20	13	33
2003	21	4	25
2004	27	0	27
2005	17	1	18
Total	560	152	712

³ Audits for cause: The FEC may audit any registered political committee: 1) whose reports do not substantially comply with the law; or 2) if the FEC has found reason to believe that the committee has committed a violation. 2 U.S.C. §§438(b) and 437g(a)(2).

⁴ Title 26 audits: The Commission must give priority to these mandatory audits of publicly funded committees.

⁵ Random audits: Most of these audits were performed under the Commission's random audit policy (pursuant to the former 2 U.S.C. §438(a)(8)). The authorization for random audits was repealed by Congress in 1979.

Appendix 6

2005 Federal Register

Notices

2005-1

Filing dates for the California Special Election in the 5th Congressional District; Notice of filing dates for Special Election (70 FR 3926, January 27, 2005).

2005-2

De Minimis Exemption for Disbursement of Levin Funds by State, District, and Local Party Committees; Notice of Proposed Rulemaking (70 FR 5385, February 2, 2005).

2005-3

Definition of “Agent” for BCRA Regulations on Non-Federal Funds or Soft Money and Coordinated and Independent Expenditures; Notice of Proposed Rulemaking (70 FR 5382, February 2, 2005).

2005-4

Contributions and Donations by Minors; Final Rules (70 FR 5565, February 3, 2005).

2005-5

Price Index Increases for Expenditure and Contribution Limitations; Notice of Expenditure and Contribution Limitation Increases (70 FR 7109, February 10, 2005).

2005-6

Candidate Solicitation at State, District and Local Party Fundraising Events; Notice of Proposed Rulemaking (70 FR 9013, February 24, 2005).

2005-7

Price Index Increases for Expenditure and Contribution; Corrected Notice of Expenditure and Contribution Limitation Increases (70 FR 11658, March 9, 2005).

2005-8

Political Party Committees Donating Funds to Certain Tax-Exempt Organizations and Political Organizations; Final Rules (70 FR 12787, March 16, 2005).

2005-9

Filing Documents by Priority Mail, Express Mail and Overnight Delivery Service; Final Rules (70 FR 13089, March 18, 2005).

2005-10

Internet Communications; Notice of Proposed Rulemaking (70 FR 16967, April 4, 2005).

2005-11

Notice of Public Hearings for Candidate Solicitation at State, District and Local Party Fundraising Events; Definition of “Agent” for BCRA Regulations; Payroll Deductions by Member Corporations for Contributions to a Trade Association’s Separate Segregated Fund (70 FR 21163, April 25, 2005).

2005-12

State, District and Local Party Committee Payment of Certain Salaries and Wages; Notice of Proposed Rulemaking (70 FR 23072, May 4, 2005).

2005-13

Definition of Federal Election Activity; Notice of Proposed Rulemaking (70 FR 23068, May 4, 2005).

2005-14

Filing dates for the Ohio Special Election in the 2nd Congressional District; Notice of Filing Dates for Special Election (70 FR 28304, May 17, 2005).

2005-15

Travel on Behalf of Candidates and Political Committees; Announcement of Effective Date (70 FR 33689, June 15, 2005).

2005-16

Inflation Adjustments for Civil Monetary Penalties; Final Rules (70 FR 34633, June 9, 2005)

2005-17

Candidate Solicitation at State, District and Local Party Fundraising Events; Revised Explanation and Justification (70 FR 37649, June 30, 2005).

2005-18

Payroll Deductions by Member Corporations for Contributions to a Trade Association's Separate Segregated Fund; Final Rules (70 FR 41939, July 21, 2005).

2005-19

Notice of Public Hearings for State, District and Local Party Committee Payment of Certain Salaries and Wages; Definition of Federal Election Activity (70 FR 42282, July 22, 2005).

2005-20

Electioneering Communications; Notice of Proposed Rulemaking (70 FR 49508, August 24, 2005).

2005-21

Filing Dates for the California Special Election in the 48th Congressional District; Notice of Filing Dates for Special Election (70 FR 50347, August 26, 2005).

2005-22

State, District and Local Party Committee Payment of Certain Salaries and Wages; Reopening of Comment Period (70 FR 51302, August 30, 2005).

2005-23

Definition of Federal Election Activity; Reopening of Comment Period (70 FR 51302, August 30, 2005).

2005-24

Definitions of "Solicit" and "Direct;" Notice of Proposed Rulemaking (70 FR 56599, September 28, 2005.)

2005-25

Electioneering Communications; Notice of Public Hearing (70 FR 60744, October 19, 2005).

2005-26

\$5,000 Exemption for Disbursements of Levin Funds by State, District and Local Party Committees and Organizations; Final Rules (70 FR 69631, November 17, 2005).

2005-27

State, District and Local Party Committee Payment of Certain Salaries and Wages; Final Rules (70 FR 75379, December 20, 2005).

2005-28

Coordinated Communications; Notice of Proposed Rulemaking (70 FR 73946, December 14, 2005).

2005-29

Electioneering Communications; Final Rules (70 FR 75713, December 21, 2005).

2005-30

Extension of Administrative Fine Program; Final Rules (70 FR 75717, December 21, 2005).

2005-31

Filing Dates for the California Special Election in the 50th Congressional District, Notice of Filing Dates for Special Election (71 FR 1427, January 9, 2006).

Appendix 7

2005 Advisory Opinions

AO 2004-43

Sale of ad time not a contribution (Missouri Broadcasters Association; issued February 14, 2005).

AO 2004-45

Accounting method for determining excess contributions under Millionaires' Amendment (Ken Salazar and Salazar for Senate; issued January 27, 2005).

AO 2005-1

Indian tribe not a federal contractor (Mississippi Band of Choctaw Indians; issued March 14, 2005).

AO 2005-2

Fundraising by federal officeholder for nonfederal campaigns (Senator Jon Corzine and Corzine for Governor, Inc.; issued April 22, 2005).

AO 2005-3

Affiliation of membership organizations (American College of Obstetricians and Gynecologists; issued April 22, 2005).

AO 2005-4

Assignment and reporting restitution owed to committee (John Boehner and Friends of John Boehner; issued May 5, 2005).

AO 2005-5

Federal officeholder's use of funds from nonfederal exploratory committee (Representative Ray LaHood; issued June 10, 2005).

AO 2005-6

Former officeholder's donations of remaining campaign funds to charity (Friends of McInnis Canyons National Conservation Area; issued June 23, 2005).

AO 2005-7

Application of the press exemption and coordinated communications rule to periodicals owed by a candidate (Andy Mayberry for Congress; issued August 19, 2005).

AO 2005-9

Use of campaign funds to pay travel expenses of a federal officeholder's minor children (Friends of Chris Dodd 2004; issued August 19, 2005).

AO 2005-10

Fundraising by federal candidates and officeholders for ballot initiative committees (Representatives Howard L. Berman and John T. Doolittle; issued August 22, 2005).

AO 2005-11

Use of campaign funds to pay for legal expenses (Friends of Duke Cunningham; issued September 26, 2005).

AO 2005-12

Fundraising and spending by a federal candidate/officeholder for his nonfederal exploratory committee (Representative Chaka Fattah; issued September 22, 2005).

AO 2005-13

Nonconnected PAC's application of allocation of expenses and treatment of solicitation proceeds as contributions (EMILY's List; issued October 20, 2005).

AO 2005-14

Solicitation of regional trade association's members for contributions to the SSF of the federation of regional trade associations (Association of KFC Franchisees, Inc. and AKFCF PAC; issued October 20, 2005).

AO 2005-15

Termination and reorganization of state party committee (Republican State Executive Committee of West Virginia; issued October 20, 2005).

AO 2005-16

Application of the press exemption to Internet websites (Fired UP! LLC; issued November 18, 2005).

AO 2005-17

Membership organization/trade association affiliation and solicitation (American Crystal Sugar Company and Red River Valley Sugarbeet Growers Association, Inc.; issued November 4, 2005).

AO 2005-18

Use of campaign funds for a radio program hosted by a Federal candidate/officeholder (Representative Silvestre Reyes; issued November 18, 2005).

AO 2005-19

Application of the press exemption to a radio program (Paradigm Shift Productions; issued December 9, 2005).